

**FILED**

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

APR 30 1997 *rm*

Phil Lombardi, Clerk  
 U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Case Number 96-CR-87-01-BU

DENNY RAY HUNNICUTT  
 Defendant.

ENTERED ON DOCKET

DATE 4-30-97

**JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**

The defendant, DENNY RAY HUNNICUTT, was represented by C.W. Hack.

On motion of the United States the court has dismissed count(s) 3-8 of the Superseding indictment.

The defendant pleaded guilty on January 16, 1997, to Counts 1 & 2 of the Superseding Indictment. Accordingly, the defendant is adjudged guilty of such counts, involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 846	Conspiracy to Possess with Intent to Distribute Methamphetamine	1/7/96	1
18 USC 371	Conspiracy	1/7/96	2

As pronounced on April 24, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for count(s) 1 & 2 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 30<sup>th</sup> day of April, 1997.

*Michael Burrage*  
 The Honorable Michael Burrage, Chief  
 United States District Court

Northern District of Oklahoma ) SS

I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this court. Phil Lombardi, Clerk

By *Rosanne Smoller*  
 Deputy

Defendant's SSN: 499-66-9326

Defendant's Date of Birth: 11-1-57

Defendant's residence and mailing address: Box 389; Fairland, OK 74343

Defendant: DENNY RAY HUNNICUTT  
Case Number: 96-CR-87-01-BU

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of ninety-two (92) months as to Count 1, and 60 months as to Count 2, said counts to be served concurrently, each with the other, for a total sentence as to both counts of ninety-two (92) months.

The Court makes the following recommendations to the Bureau of Prisons: The Bureau of Prisons designate the facility at El Reno, Oklahoma for the defendant to serve this term, providing such placement meets all classification requirements. The court further recommends that the defendant receive chemical dependency treatment through the Bureau of Prisons Substance Abuse programs.

The defendant is remanded to the custody of the United States Marshal.

### RETURN

I have executed this Judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal  
By \_\_\_\_\_  
Deputy Marshal

Defendant: DENNY RAY HUNNICUTT

Case Number: 96-CR-87-01-BU

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years as to Count 1, and three (3) years as to Count 2, said counts to be served concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 4) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: DENNY RAY HUNNICUTT  
Case Number: 96-CR-87-01-BU

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	27	
Criminal History Category:	II	
Imprisonment Range:	78 months to 97 months	Count 1
	60 months	Count 2
Supervised Release Range:	5 years	Count 1
	2 to 3 years	Count 2
Fine Range:	\$ 12,500 to \$ 2,000,000	Counts 1 & 2
Restitution:	\$ n/a	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range exceeds 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

FILED

APR 28 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GAYLE SCHREIER and IRWIN SCHREIER,

Defendants.

No. 88-CR-57-01-B ✓

No. 88-CR-57-02-B ✓

ENTERED ON DOCKET

DATE 4-30-97

ORDER


The Court has for decision the Defendants' Second Petition for Coram Nobis Relief. Following a jury trial, the Defendant Gayle Schreier was found guilty of Count 2 and 3, and Defendant Irwin Schreier was found guilty of Count 2, and were convicted of wire fraud in violation of 18 U.S.C. § 1343. The Defendants each took a direct appeal to the United States Court of Appeals for the Tenth Circuit. The Court of Appeals affirmed their convictions and thereafter the Schreiers' petition for a writ of certiorari was denied. U.S. v. Schreier, 908 F.2d 645 (10th Cir. 1990), *cert. denied*, 498 U.S. 1069 (1991).

In November 1994, the Defendants filed their first petition for a writ of coram nobis, which was denied by this Court on April 5, 1995. The Defendants appealed the Court's order and the Tenth Circuit Court of Appeals affirmed the district court's denial of Defendants' petition for writ of coram nobis on April 5, 1996. U.S. v. Schreier, Case No. 95-5076 (10th Cir. 1996); 81 F.3d 173 (10th Cir. 1996).

The evidence, both direct and circumstantial, presented to the jury during the trial on

January 26, 27, 30, 31 and February 1, 1989, was sufficient to submit the issue of guilt of the Defendants regarding said counts to the jury. The jury found the Defendants guilty. The Defendants' Second Petition for Writ of Coram Nobis is hereby DENIED, because as previously determined, the evidence in the record is adequate to support the subject convictions.

IT IS HEREBY SO ORDERED this 27<sup>th</sup> day of April, 1997.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET  
DATE APR 29 1997UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 95-CR-141-01-H

DONAL HOGAN  
Defendant.**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)FILED  
APR 28 1997  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

The defendant, DONAL HOGAN, was represented by Allen Smallwood.

The defendant pleaded guilty on April 19, 1996, to count(s) 1 &amp; 2 of the Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy	9/14/95	1
18 USC 1955 & 2	Illegal Gambling and Causing A Criminal Act	9/14/95	2

As pronounced on April 17, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, as to Counts 1 &amp; 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 28<sup>th</sup> day of April, 1997.  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 441-36-5937

Defendant's Date of Birth: 11-3-37

Defendant's residence and mailing address: 1915 "K" St. S.W.; Miami, OK 74354

Defendant: DONAL HOGAN  
Case Number: 95-CR-141-01-H

### PROBATION

The defendant is hereby placed on probation for a term of three (3) years as to Counts 1 & 2, said counts to run concurrently, each with the other.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of two (2) months, to commence within seven (7) days of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.



Defendant: DONAL HOGAN  
Case Number: 95-CR-141-01-H

**FINE**

The defendant shall pay a fine of \$ 4,000 as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of Probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: DONAL HOGAN  
Case Number: 95-CR-141-01-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

#### Guideline Range Determined by the Court:

Total Offense Level:	15	
Criminal History Category:	I	
Imprisonment Range:	18 months to 24 months	Counts 1 & 2
Supervised Release Range:	2 to 3 years	Counts 1 & 2
Fine Range:	\$ 4,000 to \$ 40,000	Counts 1 & 2
Restitution:	\$ n/a	

The sentence departs from the guideline range for the following reason(s): upon motion of the government, as a result of defendant's substantial assistance.

*1 per*

APR 29 1997 FILED

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

APR 28 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Case Number 95-CR-151-01-H

RICHARD ALLEN HUCKABEE  
Defendant.**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, RICHARD ALLEN HUCKABEE, was represented by Patrick A. Williams.

The defendant pleaded guilty on February 12, 1996, to Counts 1 & 2 of the Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

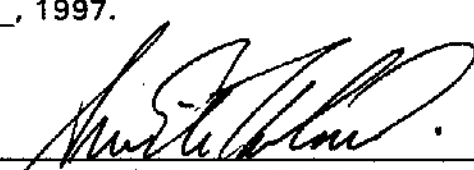
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy	9/14/95	1
18 USC 1955 & 2	Illegal Gambling and Causing a Criminal Act	9/14/95	2

As pronounced on April 17, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for count(s) 1 & 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 28<sup>th</sup> day of April, 1997.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 533-42-8468

Defendant's Date of Birth: 9/28/45

Defendant's residence and mailing address: 309 E. Gate; Miami, OK 74354

42

Defendant: RICHARD ALLEN HUCKABEE  
Case Number: 95-CR-151-01-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of one (1) day, to Counts 1 & 2, said counts to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: That the sentence be served at Tulsa City/County Jail.

The defendant shall surrender to the Bureau of Prisons for service of sentence within thirty (30) days of the sentencing date.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons within thirty (30) days.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

Defendant: RICHARD ALLEN HUCKABEE

Case Number: 95-CR-151-01-H

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to Counts 1 & 2, said counts to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of six (6) months, to commence within 72 hours of release from confinement. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: RICHARD ALLEN HUCKABEE

Case Number: 95-CR-151-01-H

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 10,000 as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: RICHARD ALLEN HUCKABEE  
Case Number: 95-CR-151-01-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	16	
Criminal History Category:	I	
Imprisonment Range:	21 months to 27 months	Counts 1 & 2
Supervised Release Range:	2 to 3 years	Counts 1 & 2
Fine Range:	\$ 5,000 to \$ 50,000	Counts 1 & 2
Restitution:	\$ n/a	

The sentence departs from the guideline range: Upon motion of the government, as a result of defendant's substantial assistance.

JTH

ENTERED ON BOOKET  
DATE APR 29 1997UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-029-002-H ✓

EVALINE M. LAMMEY  
Defendant.**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)FILED  
APR 28 1997  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

The defendant, EVALINE M. LAMMEY, was represented by C.W. Hack.

The defendant pleaded guilty on April 5, 1996, to Counts One and Two of the Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy	09-14-95	1
18 USA 1955 & 2	Illegal Gambling and Aiding and Abetting	09-14-95	2

As pronounced on April 17, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, for count(s) One and Two of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 28<sup>th</sup> day of APRIL, 1997.
  
 The Honorable Sven Erik Holmes  
 United States District Judge

Defendant's SSN: 446-38-0898

Defendant's Date of Birth: 10-19-40

Defendant's residence and mailing address: 409 North Cherry St., Commerce, OK 74339



Defendant: EVALINE M. LAMMEY  
Case Number: 96-CR-029-002-H

### PROBATION

The defendant is hereby placed on probation for a term of three (3) years as to each of Counts One and Two, to run concurrently each with the other.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of six months, to commence within seven (7) days of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: EVALINE M. LAMMEY  
Case Number: 96-CR-029-002-H

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,000 as to Count One. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of Probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: EVALINE M. LAMMEY  
Case Number: 96-CR-029-002-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	15	
Criminal History Category:	I	
Imprisonment Range:	18 months to 24 months	Counts One & Two
Supervised Release Range:	2 to 3 years	Counts One & Two
Fine Range:	\$ 4,000 to \$ 40,000	Counts One & Two
Restitution:	\$ n/a	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): The sentence departs from the guideline range: Upon motion of the government, as a result of defendant's substantial assistance.

*Handwritten signature*

ENTERED ON DOCKET  
APR 29 1997UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 95-CR-150-002-H

STEVE EAST  
Defendant.JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)FILED  
APR 28 1997  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

The defendant, STEVE EAST, was represented by Robert S. Durbin.

On motion of the United States the court has dismissed count(s) 1 &amp; 2 of the Indictment.

The defendant pleaded guilty March 15, 1996, to Counts 1, 2, &amp; 3 of the Superseding Information. Accordingly, the defendant is adjudged guilty of such counts, involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371	Conspiracy	9/14/95	1
18 USC 1955 & 2	Illegal Gambling and Aiding and Abetting	9/14/95	2
18 USC 1511	Obstruction of Justice	9/14/95	3

As pronounced on 4/17/97, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 150. for count(s) 1, 2, &amp; 3 of the Superseding Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 28<sup>TH</sup> day of APRIL, 1997.  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 446-78-4686

Defendant's Date of Birth: 4/17/65

Defendant's residence and mailing address: Route 2, Box 122 C; Wyandotte, OK 74370

Defendant: STEVE EAST  
Case Number: 95-CR-150-002-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of one (1) month, as to Counts 1, 2, & 3, all counts to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: Classification provisions permitting, the court recommends that the Bureau of Prisons designate the Tulsa County Jail as the place of service for this one (1) month term.

The defendant shall surrender to the United States marshal for this district at 9:00 a.m. on May 17, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: STEVE EAST  
Case Number: 95-CR-150-002-H

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to each of Counts 1, 2, & 3 to run concurrently.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of five (5) months, to commence within 72 hours of release from confinement. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: STEVE EAST  
Case Number: 95-CR-150-002-H

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,000 as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: STEVE EAST  
Case Number: 95-CR-150-002-H

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	12	
Criminal History Category:	I	
Imprisonment Range:	10 months to 16 months	Counts 1, 2, & 3
Supervised Release Range:	2 to 3 years	Counts 1, 2, & 3
Fine Range:	\$ 3,000 to \$ 30,000	Counts 1, 2, & 3
Restitution:	\$ n/a	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range: Upon motion of the government, as a result of defendant's substantial assistance.

*efu*



UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

*Entered on Docket 4-28-97*

v.

Case Number 96-CR-139-01-K

MANOJKUMAR B. PATEL  
Defendant.

**FILED**

APR 28 1997

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987) Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, MANOJKUMAR B. PATEL, was represented by Mark Graziano.

The defendant pleaded guilty November 13, 1996, to Counts 1 of the Information. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1341	Mail Fraud	8/31/95	1

As pronounced on April 17, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 25 day of April, 1997.

  
The Honorable Jerry C. Kern, Chief  
United States District Judge

Defendant's SSN: 443-80-3862

Defendant's Date of Birth: 4/2/67

Defendant's residence and mailing address: 1808 E. 66th Pl., No. 201-D; Tulsa, OK 74136

Defendant: MANOJKUMAR B. PATEL  
Case Number: 96-CR-139-01-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of twelve (12) months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before noon on June 20, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: MANOJKUMAR B. PATEL

Case Number: 96-CR-139-01-K

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of four (4) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant must receive the approval of the U.S. Probation Office prior to accepting any employment offer, or before he enters into any other business or investment venture.
7. The defendant shall comply with any and all instructions given to him by the Immigration and Naturalization Service concerning a review of his residency status and/or deportation proceedings. If the defendant is deported from the United States at the conclusion of the term of imprisonment imposed in this case, he shall not illegally reenter the United States. If the defendant is deported and reenters the United States, either legally or illegally during the term of supervised release, he shall report to the U.S. Probation Office closest to his point of entry within 72 hours.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MANOJKUMAR B. PATEL  
Case Number: 96-CR-139-01-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$19,647.02.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
G.E. Recovery Services (MBGA Technology Account Numbers CG9553370160938 and CG9553370220476) PO Box 2904 Shawnee Mission, Kansas 66201	\$7,551.28
Prime Option MasterCard Attention: Darren Brown, Fraud Prevention Division Account Number 5429762024005370 PO Box 30205 Salt Lake City, Utah 84130	\$5,673.67
First Bank System Attention: Jeffrey Handke (Visa account number 4190-0808-9260-4590) PO Box 2097 Denver, Colorado 80201	\$6,422.07

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: MANOJKUMAR B. PATEL  
Case Number: 96-CR-139-01-K

Judgment--Page 5 of 5

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10	
Criminal History Category:	III	
Imprisonment Range:	10 months to 16 months	Counts 1 & 2
Supervised Release Range:	3 to 5 years	Counts 1 & 2
Fine Range:	\$ 2,000 to \$ 1,000,000	Count 1
Restitution:	\$ 19,647.02	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

*Handwritten signature*

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 28 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

RONALD E. ELDRIDGE,

Defendant,

and

TRINITY INDUSTRIES,

Garnishee.

CIVIL ACTION NO. 93-CR-74-E

ENTERED ON DOCKET

DATE APR 28 1997

ORDER DIRECTING DISBURSAL OF GARNISHMENT MONIES

This Court having reviewed the United States' Application for Disbursal of Garnishment Monies finds:

1. Pursuant to the Writ of Continuing Garnishment entered on February 12, 1997, the Garnishee, Trinity Industries, has made garnishment payments into the Court's registry deposit fund.

2. A Garnishee Order was issued April 10, 1997, ordering the Garnishee, Trinity Industries, to pay twenty-five percent (25%) of Ronald E. Eldridge's income to plaintiff and continue said payment until the debt to the plaintiff is paid in full or until the garnishee, Trinity Industries, no longer has custody, possession or control of any property belonging to the debtor, Ronald E. Eldridge, or until further Order of the Court. Payment is to be made to the U.S. Department of Justice and submitted to the U. S. Attorney's Office.

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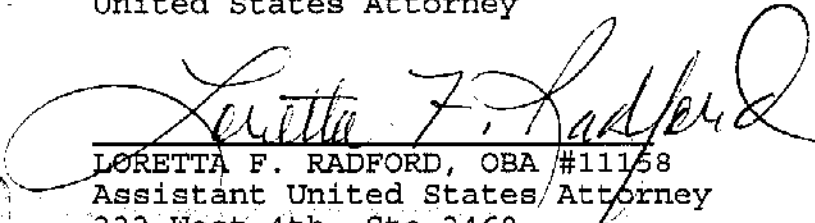
IT IS THEREFORE ORDERED that the United States Court Clerk is to disburse all monies paid into the Court's registry deposit fund as a result of the United States' garnishment on Ronald E. Eldridge.

  
United States District Judge

Submitted by:

UNITED STATES OF AMERICA

Stephen C. Lewis  
United States Attorney

  
LORETTA F. RADFORD, OBA #11158  
Assistant United States Attorney  
333 West 4th Ste 3460  
Tulsa, Oklahoma 74103  
(918) 581-7463

LFR/sba

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

MANOJKUMAR B. PATEL  
Defendant.

Case Number 96-CR-139-01-K

**FILED**

APR 28 1997

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987) Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, MANOJKUMAR B. PATEL, was represented by Mark Graziano.

The defendant pleaded guilty November 13, 1996, to Counts 1 of the Information. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1341	Mail Fraud	8/31/95	1

As pronounced on April 17, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 25 day of April, 1997.

  
The Honorable Jerry C. Kern, Chief  
United States District Judge

Defendant's SSN: 443-80-3862

Defendant's Date of Birth: 4/2/67

Defendant's residence and mailing address: 1808 E. 66th Pl., No. 201-D; Tulsa, OK 74136



Defendant: MANOJKUMAR B. PATEL  
Case Number: 96-CR-139-01-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of twelve (12) months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before noon on June 20, 1997.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: MANOJKUMAR B. PATEL

Case Number: 96-CR-139-01-K

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of four (4) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant must receive the approval of the U.S. Probation Office prior to accepting any employment offer, or before he enters into any other business or investment venture.
7. The defendant shall comply with any and all instructions given to him by the Immigration and Naturalization Service concerning a review of his residency status and/or deportation proceedings. If the defendant is deported from the United States at the conclusion of the term of imprisonment imposed in this case, he shall not illegally reenter the United States. If the defendant is deported and reenters the United States, either legally or illegally during the term of supervised release, he shall report to the U.S. Probation Office closest to his point of entry within 72 hours.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MANOJKUMAR B. PATEL  
Case Number: 96-CR-139-01-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$19,647.02.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
G.E. Recovery Services (MBGA Technology Account Numbers CG9553370160938 and CG9553370220476) PO Box 2904 Shawnee Mission, Kansas 66201	\$7,551.28
Prime Option MasterCard Attention: Darren Brown, Fraud Prevention Division Account Number 5429762024005370 PO Box 30205 Salt Lake City, Utah 84130	\$5,673.67
First Bank System Attention: Jeffrey Handke (Visa account number 4190-0808-9260-4590) PO Box 2097 Denver, Colorado 80201	\$6,422.07

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: MANOJKUMAR B. PATEL  
Case Number: 96-CR-139-01-K

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10	
Criminal History Category:	III	
Imprisonment Range:	10 months to 16 months	Counts 1 & 2
Supervised Release Range:	3 to 5 years	Counts 1 & 2
Fine Range:	\$ 2,000 to \$ 1,000,000	Count 1
Restitution:	\$ 19,647.02	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

*gjer*

UNITED STATES DISTRICT COURT **F I L E D**  
Northern District of Oklahoma

APR 25 1997 *mw*

UNITED STATES OF AMERICA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

v.

Case Number 94-CR-064-001-*W* ✓

Thomas Reed Bryan

*EDD 4/28/97*

JUDGMENT AND COMMITMENT ORDER  
ON REVOCATION OF PROBATION

Now on this 22nd day of April, 1997, this cause comes on for a revocation and sentencing hearing regarding violations of probation conditions as set out in the Petition on Probation filed on January 30, 1997. The defendant is present in person and with his attorney, Stephen J. Knorr. The Government is represented by Assistant United States Attorney Kevin Leitch, and the United States Probation Office is represented by Belinda Ashley.

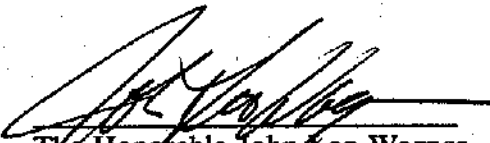
The defendant was heretofore, on July 7, 1994, convicted on his plea of guilty to a one-count Indictment which charged Theft of Bank Monies, in violation of Title 18, United States Code, Section 2113(b). He was subsequently sentenced on October 27, 1994, to a three (3) year period of probation.

On April 22, 1997, a Revocation Hearing was held regarding the allegations noted in the Petition on Probation; said allegations being that the defendant violated a state law; failed to refrain from excessive use of alcohol; and failed to work regularly at a lawful occupation. The Court found him in violation after the defendant stipulated to the allegations. A Dispositional Hearing was held this same date.

As a result of the Sentencing Hearing, the Court finds that the violations occurred after November 1, 1987, and that Chapter Seven of the U.S. Sentencing Commission Guidelines is applicable. Further, the Court finds that the violations of probation constitute Grade C violations in accordance with Section 7B1.1(a)(3), and that the defendant's original Criminal History Category of III is now applicable for determining the imprisonment range. In addition, the Court finds that a Grade C violation and a Criminal History Category of III establish a revocation imprisonment range of 5-6 months, in accordance with Section 7B1.4(a) and Title 18, United States Code, Section 3565(a). In consideration of these findings and pursuant to U.S. v. Lee, 957 F.2d 770 (Tenth Circuit, 1992), in which

the Circuit determined that the policy statements in Chapter Seven were not mandatory, but must be considered by the Court, the following is ordered:

1. The term of probation supervision shall be extended for an additional period of one year.
2. The defendant shall enter the inpatient treatment program at 12&12, Inc. within 72 hours of his release from custody to be followed by the aftercare residential treatment not to exceed one year. During the course of treatment, the Director of 12 and 12 has the authority to release the defendant upon successful completion of program.
3. The defendant shall participate in a program of mental health treatment (to include inpatient), at the discretion of the Probation Office, until such time as the defendant is released from the program by the Probation Officer.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U.S. Probation Office, to commence within 72 hours of release from the inpatient program at 12&12, Inc. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The government is responsible for the full cost of electronic monitoring.
5. The defendant shall abstain from the use of alcohol and successfully participate in a program of testing and treatment (to include inpatient) for drug abuse, as directed by the Probation Officer, until such time as released from he program by the Probation Officer.

  
The Honorable John Leo Wagner  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 21 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY GLOVER,

Defendant.

No. 91-CR-50-C

FILED  
APR 21 1997

ORDER

Currently pending before the Court is the motion filed by defendant, Roy Glover, seeking to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255.

On May 9, 1991, Glover was named in Count Two of a five-Count Indictment. On September 24, 1991, a jury convicted Glover of Count Two, conspiracy to manufacture, possess, and distribute methamphetamine, in violation of 21 U.S.C. §§ 846, and 841(a)(1). On December 11, 1991, Glover was sentenced to 235 months imprisonment. Glover's conviction and sentence were affirmed on appeal in an unpublished opinion. U.S. v. Glover, 986 F.2d 1430 (10th Cir.1993).

On January 8, 1997, Glover filed his present § 2255 motion. Glover moves this Court to vacate, set aside, or correct the sentence imposed upon him on the following grounds: (1) the Court erred in enhancing Glover's sentence pursuant to § 3C1.1 of the Sentencing Guidelines, (2) the government presented perjured testimony at trial, (3) the Court erred in sentencing Glover under the guideline applicable to D-Methamphetamine, (4) the Court erred by finding Glover responsible for nineteen pounds of methamphetamine oil, and (5) ineffective assistance of counsel.

Prior to addressing the merits of Glover's motion, the Court notes that § 2255, as amended

300

in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Glover, his motion would be time-barred. However, the Court finds that "defendants whose date of conviction would per se preclude the filing of a petition pursuant to § 2255 under a literal reading of the amendment, were surely meant to have one year from the date of the amendment to file their petitions." Smith v. U.S., 945 F.Supp. 1439, 1441 (D.Co. 1996). Hence, the Court concludes that Glover's present motion is not time-barred under § 2255, as amended.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Glover can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id. Since the government raised this procedural bar in the instant case, this Court must enforce it and hold Glover's claims barred unless cause and prejudice or a miscarriage of justice is shown. Id.

Glover first contends that the Court erred in enhancing his sentence under § 3C1.1 of the Sentencing Guidelines for obstructing or impeding justice. Glover acknowledges that this very issue was raised on direct appeal to the Tenth Circuit, which considered and rejected this argument. The Circuit concluded that Glover was properly sentenced by this Court. Glover alleges that this Court enhanced his sentence by two points under § 3C1.1 simply because the jury did not believe him. Glover insists that this Court was required to make a specific finding that he perjured himself before imposing the two-point enhancement. Glover asserts that this Court's findings on the issue of perjury



merely consisted of the Court's statement that Glover's testimony was false. However, on appeal, the Circuit specifically found that the record contains ample evidence supporting the finding of perjury. Moreover, this Court alternatively based the two-point enhancement on the testimony of Dennis Glover, who testified as to Roy Glover's attempt to have potential witnesses leave town, thereby causing them to be unable to testify at trial. The Circuit held that this alternative basis for imposing the enhancement is also sufficient to show that Glover attempted to obstruct or impede justice, thereby permitting the two-level enhancement under § 3C1.1. Thus, Glover's first ground of error fails.

Glover next alleges that the government used perjured testimony and evidence to obtain a conviction. Glover contends that the government used witnesses who provided false testimony in exchange for leniency in prosecution and sentencing. Glover represents that the government's principle witness was Johnny Glover, who testified under grants of immunity and leniency. Glover asserts that the government deliberately withheld evidence and actively suborned the perjury of Johnny Glover. The government counters that a similar issue regarding the withholding of information was rejected on appeal, and Glover's argument regarding perjured testimony is now procedurally barred. The Court agrees. On appeal, the Circuit specifically held that there was no Brady violation in this case. Thus, this aspect of Glover's argument is moot. The Court also agrees that Glover is now procedurally barred from bringing his perjury argument. As noted above, § 2255 is not a substitute for direct appeal, and those issues which are not raised on direct appeal are barred, unless cause and prejudice are shown. Glover argues that several witnesses committed perjury with respect to Glover's involvement, and that these lies were predicated upon conditions set by the government where the witnesses could gain favorable treatment. However, a review of Johnny

Glover's plea agreement explicitly reveals that in return for Johnny Glover's cooperation and *truthful* testimony at trial, the government will not pursue further prosecution against Johnny Glover for any acts he committed in the conspiracy which is the subject of the present case. Indeed, in several instances, the plea agreement stresses the necessity for truthful disclosures, and it further provides that if false statements are made or if Johnny Glover does not act with total honesty, the government will have the right to pursue additional criminal prosecution. Thus, there was clearly an inducement to act completely honestly in order to obtain favorable treatment; dishonesty would only serve to open the door to further prosecution and the nullification of the plea agreement. Additionally, Glover has offered no evidence which supports his claim that the government knowingly suborned perjury in order to obtain Glover's conviction. In order to obtain relief under § 2255 for the use of perjured testimony, Glover must establish that "a) the testimony was false; b) that it was material; and c) that it was knowingly and intentionally used by the government to obtain a conviction . . ." McBride v. U.S., 446 F.2d 229, 232 (10th Cir.1971), cert. denied, 405 U.S. 977 (1972). The Court finds that Glover has utterly failed to establish the third element of knowing and intentional use of perjury by the government. "Conclusory allegations to this effect are not sufficient." Id. Moreover, the record reveals that Johnny Glover was vigorously cross-examined by the attorneys for the various defendants, and the fact that Johnny Glover was promised certain leniency and immunity in exchange for his cooperation and testimony was fully disclosed to the jury. Thus, the jury understood that Johnny Glover was receiving a benefit from the government in exchange for his testimony, and it was within the province of the jury as to how much weight to accord Johnny Glover's testimony in light of such potential bias. Based on the totality of the evidence against him, the jury found Glover guilty. As the Circuit noted, the evidence in this case surely reveals that Glover both aided the manufacture

of the drugs and sold some of the drugs in furtherance of the conspiracy.

Glover argues that the Court erred by using the more onerous guideline attributable to D-Methamphetamine rather than L-Methamphetamine. The government conceded that, pursuant to U.S. v. Glover, 97 F.3d 1345 (10th Cir.1996), an evidentiary hearing is required to determine the type of methamphetamine involved herein. However, the Court points to its order dated March 21, 1997, involving James Barnes, Glover's co-defendant in this case. Prior to entering the Barnes order, the Court conducted an evidentiary hearing in an effort to determine which type of methamphetamine was involved in the present case. In the Barnes order, the Court concluded that the government clearly established by a preponderance of the evidence that the character of the methamphetamine involved in Barnes' offense was DL-Methamphetamine, and that Barnes' sentence was properly calculated based on his unlawful involvement with D-Methamphetamine. Since Glover was involved in the same conspiracy as Barnes, was charged in the same Count as Barnes for conspiracy to manufacture, possess and distribute methamphetamine, and since the Court has determined that the type of methamphetamine involved herein was the DL type, the Court concludes that to hold another hearing on the same issue involving the same drugs would be nonsensical. As the Court previously determined with respect to Barnes' § 2255, the Court finds that Glover was properly sentenced based on the D-Methamphetamine guideline.

In Glover's fourth ground of error, Glover alleges that the Court erred in finding him responsible for nineteen pounds of methamphetamine oil. However, the Circuit considered and rejected this argument on appeal. In his reply brief, Glover argues that Amendment 439 to the Sentencing Guidelines, which went into effect on November 1, 1992 and defines reasonable foreseeability, should apply here. However, Amendment 439 is not one of the enumerated

amendments listed in § 1B1.10(c), and, therefore, the Court is not authorized to retroactively apply it to Glover's sentence. § 1B1.10(a). Glover additionally relies on Amendment 484, which went into effect on November 1, 1993 and is listed in § 1B1.10(c), thereby permitting the Court to retroactively apply it. Amendment 484 amended Application Note 1 of the Commentary to § 2D1.1, and it provides that a mixture or substance does not include materials that must be separated from the controlled substance before the controlled substance can be used, such as the fiberglass in a cocaine/fiberglass bounded suitcase. Glover claims that the record shows that one co-defendant had experienced trouble and was in the process of moving the laboratory when he was arrested. Glover argues that the nineteen pounds of methamphetamine oil should be analyzed pursuant to Amendment 484 and a determination made as to its actual content, including the amount of waste water and other excludable products.

However, the Court notes that application of § 1B1.10 is discretionary. U.S. v. Dorrough, 84 F.3d 1309, 1311 (10th Cir.1996), cert. denied, 117 S.Ct. 446 (1996). In the present case, Glover does not actually allege that the nineteen pounds of methamphetamine attributable to him represents a mixture which contains materials that must be separated from the controlled substance before the controlled substance can be used. Nor does the Court have any reason to believe that the nineteen pounds of the controlled substance involved herein contains materials that must be separated from the methamphetamine before it can be used. On appeal, the Circuit noted that this Court counted nineteen pounds of methamphetamine made by the conspirators. At no point did the Circuit comment on the content of the nineteen pounds of methamphetamine or even refer to it as a mixture; rather, the Circuit simply referred to the nineteen pounds as being methamphetamine. In another unpublished opinion addressing claims raised by Glover's co-defendant, Randy Glover, the Circuit noted that one

of the co-conspirators, Ralph Thomas, was arrested while driving a pickup truck containing one pound of methamphetamine and fifteen or more gallons of methamphetamine oil. U.S. v. Randy Glover, 986 F.2d 1430 (10th Cir.1993). This is the same substance that was used in calculating Roy Glover's sentence. Furthermore, the Circuit in that case found that the nineteen pounds of methamphetamine upon which Glover was sentenced was a conservative estimate of the amount of drug that could have been derived from the fifteen or more gallons of methamphetamine oil. As noted, Roy Glover offered no evidence that the nineteen pounds of methamphetamine oil contains materials that must be separated from the controlled substance before the controlled substance can be used. Indeed, it appears that the methamphetamine oil attributable to Glover in the instant case could have actually produced well over nineteen pounds of methamphetamine. Hence, the Court will not disturb Glover's sentencing calculation which attributes nineteen pounds of methamphetamine to him.

Lastly, Glover asserts that his trial attorney rendered ineffective assistance. Glover alleges that his counsel failed to communicate to Glover an offer of immunity or leniency set forth by the government, failed to investigate the facts, failed to investigate and interview witnesses, failed to research the difference in punishment between D and L-Methamphetamine, and failed to object to sentencing based on D-Methamphetamine.

The Court, however, is not convinced that Glover satisfied the rigid standard contained in Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court in Strickland held that a claim of ineffective assistance of counsel has two components. First, Glover must show that his attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Id. at 687. "The proper standard for attorney performance is that of reasonably

effective assistance.” Id. Therefore, to succeed, Glover must show that his counsel’s performance fell below an objective standard of reasonableness. Furthermore, Glover must show that “the deficient performance prejudiced the defense.” Id. However, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance . . . .” Id. at 689.

With respect to Glover’s contention that his trial counsel, Jack Winn, never informed Glover of offers made by the government and did not communicate with Glover, the government provided the Court with an affidavit signed by Winn. In the affidavit, Winn states that he did communicate with Glover and did discuss offers of immunity with him. Winn also states that Glover has steadfastly stayed by the same stance after his indictment and after his trial. The record reveals that Winn sent a letter to the government in March of 1990 in which Winn stated that he had discussed at length with Glover the government’s advice to give statements and the offer of immunity. Winn also stated in the letter that Glover declined the government’s offer and that Glover professes his innocence. In his affidavit, Winn states that he sent the letter on behalf of Glover after several conversations, and Winn further states that the letter expressed Glover’s true intent and Glover’s reply to the government’s offer. Moreover, Glover apparently continues to insist that he did not participate in the criminal conduct for which he was indicted. Without such an allocution under oath and in open court, the Court would never have accepted any plea offer relating to the conspiracy in any event. Since it is apparent that counsel did communicate offers made by the government to Glover and that Glover would not have admitted the elements against him in open court, the Court finds no error.

With respect to Glover’s allegation that his counsel failed to interview or investigate witnesses, the Court finds that Glover failed to demonstrate ineffective assistance. Glover merely

alleges that had trial counsel done the proper investigation and called witnesses to testify, the results of the trial would have been different. However, Glover does not point to any specific instance in which counsel failed to conduct an investigation or interview a witness, and Glover failed to show that had counsel conducted such investigations, the result would have been different. As noted, the Court must indulge a strong presumption that counsel's conduct falls within the wide range of acceptable performance, and without competent evidence indicating that counsel's conduct fell below the standard of reasonable assistance, the Court simply cannot hold that counsel's alleged errors rose to the level of ineffective assistance. The Court will not entertain speculation as to what the result might have been if counsel had conducted trial preparation in a certain manner. Rather, Glover must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland at 694. Glover has simply failed in this respect.

The issue regarding counsel's ineffectiveness for failing to research the difference in punishment between D and L-Methamphetamine is moot. As noted, the Court has already concluded that Glover was properly sentenced pursuant to D-Methamphetamine. Hence, even assuming counsel erred in failing to raise this issue at sentencing, there has been no prejudice.

Glover requests a hearing on the issues raised herein. Section 2255 provides that unless the motion and records conclusively show that Glover is entitled to no relief, the Court shall grant a hearing. In the present case, the Court concludes that the record conclusively shows that Glover is entitled to no relief, and a hearing would simply be superfluous. Hence, Glover's request for a hearing is denied.

Accordingly, Glover's motion pursuant to § 2255 is hereby DENIED.

IT IS SO ORDERED this 17<sup>th</sup> day of April, 1997.

A handwritten signature in cursive script, appearing to read "H. Dale Cook", written over a horizontal line.

H. Dale Cook  
U.S. District Judge



FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT COURT OF OKLAHOMA

APR 18 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA  
Plaintiff,

vs.

MICHAEL MORRIS  
Defendant.

)  
)  
)  
) Docket No. 92-CR-060-001-B  
)  
)  
)

ENTERED ON DOCKET

DATE 4-18-97

ORDER ON MODIFICATION  
OF CONDITIONS OF SUPERVISED RELEASE

Now on this 17th day of April 1997, this cause comes on for a Show Cause hearing on Revocation of Supervised Release as set out in the Memorandum of Violation provided to all parties by order of the Court on April 10, 1997. The defendant is present in person and with his attorney, Tony Graham. The Government is represented by Assistant United States Attorney Charles McLoughlin, and the United States Probation Office is represented by Bradford Stewart.


The defendant heretofore, on August 4, 1992, entered a guilty plea to Count One which charged Use of Fraudulent Social Security Number, in violation of 42 U.S.C. § 408(a)(7)(B). On January 4, 1993, Morris was sentenced to a 30 month custody term, to be followed by a three year term of supervised release, which commenced upon Morris' release from custody on March 29, 1995.

The Court finds based on evidence presented in the Memorandum that conditions of supervised release in Count One should be modified. Accordingly, pursuant to 18 U.S.C. § 3583(e)(2) the following is ordered:

United States District Court )  
Northern District of Oklahoma ) SS

I hereby certify that the foregoing  
is a true copy of the original on file  
in this court.

Phil Lombardi, Clerk

By  Deputy

It is adjudged by the Court that the following special condition of supervised release shall supplement the standard and special conditions originally imposed in the Judgment and Commitment

Order filed January 12, 1993, and the special conditions imposed on August 3, 1995, and January 25, 1996, to wit:

1. You shall be placed in community confinement, commencing at 6:00 p.m., Wednesday, April 23, 1997, and continuing until June 12, 1997. It is recommended to the Bureau of Prisons that the Freedom Ranch in Tulsa, Oklahoma, be designated as the place of confinement.

The Defendant is hereby advised of his right to appeal the alteration of his terms of supervised release to the Tenth Circuit Court of Appeals. A notice of appeal must be filed within ten (10) days from this date. If Defendant lacks funds to employ counsel or pay for an appeal, same will be provided at the expense of the Government. The special condition of Defendant's supervised release is hereby implemented notwithstanding appeal.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

4-18-97

**FILED**

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

APR 17 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 92-CR-147-001-B

TROY HOWARD COOL  
Defendant.

ENTERED ON DOCKET

DATE 4-18-97

**AMENDED JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**  
**(Direct Motion to District Court pursuant to 28 USC § 2255)**

The defendant, TROY HOWARD COOL, was represented by John Street.

The defendant pleaded guilty to Count(s) 1 and 2 of the Indictment. On April 14, 1997, the Court granted defendant's § 2255 Motion vacating the 18 USC § 924(c) conviction described in Count 2. Accordingly, the defendant is adjudged guilty of Count 1, involving the following offense(s):

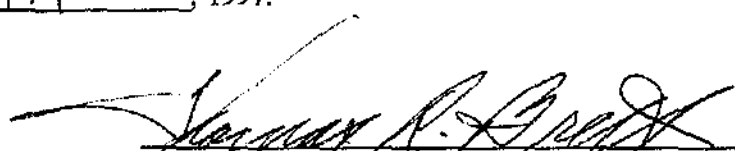
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841(a)(1), and 841(b)(1)(A)(viii)	Possession With Intent to Distribute Methamphetamine	10/13/92	1

As pronounced on April 14, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately, **unless previously paid.**

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 17<sup>th</sup> day of April, 1997.

  
The Honorable Thomas R. Brett, Senior  
United States District Judge

Defendant's SSN: 510-60-4365  
Defendant's Date of Birth: 10-05-55  
Defendant's residence and mailing address: C/O Bureau of Prisons, Dallas, Texas

United States District Court } SS  
Northern District of Oklahoma }  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court.

Phil Lombardi, Clerk  
By   
Clerk

Defendant: TROY HOWARD COOL  
Case Number: 92-CR-147-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months as to Count 1.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant be designated to facility offering substance abuse counseling.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: TROY HOWARD COOL  
Case Number: 92-CR-147-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: TROY HOWARD COOL  
Case Number: 92-CR-147-001-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 25,000.00 as to Count 1. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: TROY HOWARD COOL  
Case Number: 92-CR-147-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report except the Court excludes drug amounts used in determining guideline sentence range over 1,042.44 grams methamphetamine pursuant to USSG § 1B1.8.

**Guideline Range Determined by the Court:**

Total Offense Level:	29
Criminal History Category:	III
Imprisonment Range:	120 months to 135 months - Ct. 1
Supervised Release Range:	3 to 5 years - Ct. 1
Fine Range:	\$ 15,000 to \$ 4,000,000 - Ct. 1
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

*pm*

# UNITED STATES DISTRICT COURT

## Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-147-001-H

ROBERT LOUIS HICKS aka "Rocky"  
Defendant.

FILED  
APR 16 1997  
Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE 4-17-97

### JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, ROBERT LOUIS HICKS aka "Rocky", was represented by Stephen J. Knorr.

On motion of the United States the court has dismissed count(s) 1 and 3 through 6 of the Indictment.

The defendant pleaded guilty to count(s) 2 of the Indictment on December 19, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
1 USC 841(a)(1), 841(b)(1)(B)(iii)	Distribution of a Controlled Substance	07/10/96	2

As pronounced on April 4, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100.00, for count(s) 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 15<sup>TH</sup> day of APRIL, 1997.

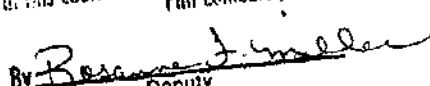
  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 441-88-9206

Defendant's Date of Birth: 10/05/73

Defendant's residence and mailing address: 2202 B West Newton, Tulsa, OK 74127

United States District Court  
Northern District of Oklahoma ) ss  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court. Phil Lombardi, Clerk

By   
Deputy



Defendant: ROBERT LOUIS HICKS aka "Rocky"  
Case Number: 96-CR-147-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 63 months.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant be incarcerated at a facility specializing in comprehensive drug treatment.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
at Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: ROBERT LOUIS HICKS aka "Rocky"

Case Number: 96-CR-147-001-H

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: ROBERT LOUIS HICKS aka "Rocky"  
Case Number: 96-CR-147-001-H

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 5,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: ROBERT LOUIS HICKS aka "Rocky"  
Case Number: 96-CR-147-001-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report except the Court does not apply the 2 point enhancement for possession of a weapon pursuant to 2D1.1(b)(1).

**Guideline Range Determined by the Court:**

Total Offense Level:	23
Criminal History Category:	II
Imprisonment Range:	60 months to 63 months - Ct. 2
Supervised Release Range:	4 to 5 years - Ct. 2
Fine Range:	\$10,000 to \$2,000,000
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-160-001-H

SANFORD DALE RANKINS  
Defendant.

ENTERED ON DOCKET

DATE 4-16-97

FILED

APR 16 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

The defendant, SANFORD DALE RANKINS, was represented by Mike Abel.

The defendant pleaded guilty to count(s) 1 of the Indictment on December 20, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 846, 843 (a)(3)	Conspiracy to Obtain and Obtaining Controlled Substance by Fraud	10/20/94	1

As pronounced on April 11, 1997, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 15<sup>TH</sup> day of APRIL, 1997.

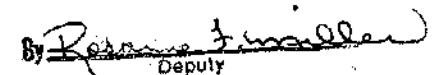
  
The Honorable Sven Erik Holmes  
United States District Judge

United States District Court  
Northern District of Oklahoma  
I hereby certify that this is a true copy of the original on file in this court.  
Phil Lombardi, Clerk

Defendant's SSN: 447-66-8864

Defendant's Date of Birth: 07/15/60

Defendant's residence and mailing address: Route 3, Box 30, Wagoner, Oklahoma 74467

By   
Deputy

Defendant: SANFORD DALE RANKINS  
Case Number: 96-CR-160-001-H

### PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

The defendant shall complete 100 hours of community service during the period of probation as directed by the U.S. Probation Officer.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 4) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: SANFORD DALE RANKINS

Case Number: 96-CR-160-001-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	6
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct.1
Supervised Release Range:	1 year - Ct.1
Fine Range:	\$ 500 to \$ 5,000 - Ct.1
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

*[Handwritten signature]*

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

UNITED STATES OF AMERICA

v.

Case Number 96-CR-124-001-K

SHANE D. REDMAN  
 Defendant.

ENTERED ON DOCKET

DATE 4-15-97**FILED**

APR 15 1997

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

 Phil Lombardi, Clerk  
 U.S. DISTRICT COURT

The defendant, SHANE D. REDMAN, was represented by Stephen J. Knorr.

The defendant pleaded guilty to count(s) 1 of the Indictment on November 5, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

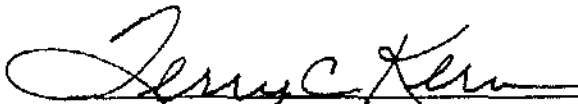
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 659	Theft From Interstate Shipment	08-17-96	1

As pronounced on April 8, 1997, the defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 14 day of April, 1997.

  
 The Honorable Terry C. Kern, Chief  
 United States District Judge

Defendant's SSN: 443-70-1295

Defendant's Date of Birth: 07-03-74

Defendant's residence and mailing address: 8012 S. Wheeling #1, Tulsa, Oklahoma 74136



Defendant: SHANE D. REDMAN  
Case Number: 96-CR-124-001-K

### PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: SHANE D. REDMAN  
Case Number: 96-CR-124-001-K

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 250.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: SHANE D. REDMAN  
Case Number: 96-CR-124-001-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$764.00 on Count 1.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
UPS, Claim #234A3059 5805 S. 118th E. Ave. Tulsa, OK 74146	\$395.00
Gateway 2000 Attn: Robert Butler P.O. Box 2000 North Sioux City, SD 57049	\$369.00

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: SHANE D. REDMAN  
Case Number: 96-CR-124-001-K

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report dated April 8, 1997.

**Guideline Range Determined by the Court:**

Total Offense Level:	5
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 250 to \$ 5,000 - Ct. 1
Restitution:	\$ 764

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

**FILED**

APR 14 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-121-001-B

NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper, and N.W. Culpepper  
 Defendant.

**JUDGMENT IN A CRIMINAL CASE**

ENTERED ON DOCKET

(For Offenses Committed On or After November 1, 1987) DATE 4-14-97

The defendant, NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper, and N.W. Culpepper, was represented by Everett Bennett.

The defendant pleaded guilty to count(s) 1 of the Information on October 2, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

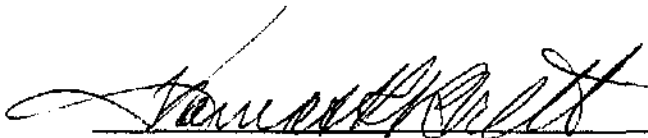
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy	03/93	1

As pronounced on April 3, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 9<sup>th</sup> day of April, 1997.

  
 The Honorable Thomas R. Brett, Senior  
 United States District Judge

Defendant's SSN: 448-58-4802

Defendant's Date of Birth: 02/14/56

Defendant's residence and mailing address: 4620 E. 27th St., Tulsa, OK 74126

United States District Court ) SS  
Northern District of Oklahoma )I hereby certify that the foregoing  
is a true copy of the original on file  
in this court.

Phil Lombardi, Clerk

By 

Deputy

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 27 months.

The Court makes the following recommendations to the Bureau of Prisons: That the Bureau of Prisons designate the facility at Springfield, MO., as the place of service of this sentence.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 1:00 p.m. on May 15, 1997.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$50,000.

The defendant shall make restitution to the following persons in the following amounts:

**PLEASE SEE ATTACHMENT**



Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

ATTACHMENT OF RESTITUTION AND FORFEITURE

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Larry Wheaton 100 East Breamer Bosie, Idaho 83702	\$23.36
Robert Green 4311 E. 104th St. Tulsa, Oklahoma 74137	\$ 2.33
Tom Ward 5215 E. 71st., #1100 Tulsa, Oklahoma 74136	\$ 1.56
Jerome Deshazo 4125 E. Charter Oak Rd. Phoenix, Arizona 85032	\$11.68
Ray Berry 3820 Maple Shore Drive Excelsior, Minnesota 55321	\$ 9.26
Mary Leibold 5348 Woodglen Columbus, Ohio 43214	\$11.68
Glenard Goodyear 144 North Street, Rt. 605 Sunbury, Ohio 43054	\$ 5.83
Jack Evans 4491 Johnstown Rd. Gahanna, Ohio 43230	\$11.68
William Yarber 599 Marburn Dr. Columbus, Ohio 43214	\$11.68

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

**RESTITUTION AND FORFEITURE CONTINUED:**

Ross Flanary 2615 North D. Street Fort Smith, Arkansas 72901	\$ 6.23
Galon Flanary 13258 W. Hwy. 16 Fayetteville, Arkansas 72701	\$ .80
Robert Teater 286 W. Weisheimer Rd. Columbus, Ohio 43214	\$ 11.68
Harold Lloyd 2984 Westmoor Ct. Columbus, Ohio 43204	\$ 11.68
Dale Lindemann 822 Fayetteville Van Buren, Arkansas 72956	\$ 4.67
Robert Yarber 9950 S.W. 194th St. Miami, Florida 33157	\$ 11.68
Jerome Deshazo 4125 E. Charter Oak Rd. Phoenix, Arizona 85032	\$ 23.36
Roger Skaggs 1908 Winter Park Austin, Texas 78746	\$ 58.39
Robert Culp P.O. Box 1087 Austin, Texas 78746	\$805.34
Donnie Benton 510 North loop 121 SW Belton, Texas 76513	\$148.10

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

**RESTITUTION AND FORFEITURE CONTINUED:**

Larry Thompson \$2,221.64  
(Trustee for Everett Brentham)  
510 North Loop 121 SW  
Belton, Texas 76513

Wanda Allen Prince \$3,702.24  
5805 South Court  
Austin, Texas 78730

Max Nelson \$ 740.55  
127 Jami Lane  
Dehli, Lousianna 71232

Ray Berry \$ 63.87  
3820 Maple Shore Dr.  
Excelsior, Minnesota 55312

Albert Cox \$ 740.55  
6125 San Ramon  
Corpus Christi, texas 78413

Richard Gannon \$ 740.55  
6543 Taiga Circle  
Eden Prairie, Minnesota 55346

Ed Beggs \$1,481.09  
5046 Merganser  
Corpus Christi, Texas 78413

Larry Durham \$ 740.55  
4512 New Orleans  
Plano, Texas 75093

Wilfred Loggins \$ 740.55  
2105 S. Cynthia, #D-108  
McAllen, Texas 78503

Gaylan Yates \$1,481.09  
3330 N. 56th, Suite 206  
Oklahoma City, Oklahoma 73112

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

RESTITUTION AND FORFEITURE CONTINUED:

James McDonnell 8427 Cambrid Drive Austin, Texas 78731	\$ 740.55
Fred Wendlandt 5328A Balcones Dr. Austin, Texas 78731	\$ 925.68
Scott Wendlandt 5328A Balcones Dr. Austin, Texas 78731	\$ 185.14
Brent Rody 401 Carmel Valley Way Edmond, Oklahoma 73034	\$ 269.22
Carlan Yates 711 Stanton L. Young, Suite 310 Oklahoma City, Oklahoma	\$11,505.60
Joe Fruend 13500 Skyview Edmond, Oklahoma 73013	\$ 740.55
Ed Beggs 5046 Merganser Dr. Corpus Christi, Texas 78413	\$ 740.55
Wallace Robertson 3404 Somerset Dr. Arlington, Texas 76013	\$ 370.27
E.A. Boyd 12808 Russell Overland Park, Kansas 66208	\$ 4,998.70
Felix Wright (Address unknown)	\$ 1,851.37

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

RESTITUTION AND FORFEITURE CONTINUED:

Van Waiters \$ 925.68  
3310 Percival Ave.  
Miami, Florida 33133

Reggie Rutland \$ 925.68  
170 Milbora Lane  
College park, Georgia 30349

Eric Everett \$ 740.55  
P.O. Box 1130  
Coppell, Texas 75019

Glen and Tona Smith \$3,702.24  
11213 Greenbriar Chase  
Oklahoma City, Oklahoma 73170

Jeff Green \$ 370.27  
511 Chautauqua  
Norman, Oklahoma 73069

D.C. Buckles \$ 185.14  
13224 Green Valley Dr.  
Oklahoma City, Oklahoma 73120

Richard Buckles \$ 185.14  
13224 Green Valley Dr.  
Oklahoma City, Oklahoma 73120

Rick Gurney \$ 185.14  
3938 Carrizo  
Plano, Texas 75074

William Roark \$ 370.27  
403 College  
Delhi, Lousianna 71232

Robert Forbes \$ 740.55  
101 E. Atkinson Plaza  
Midwest City, Oklahoma 73110

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

**RESTITUTION AND FORFEITURE CONTINUED:**

Dawna McCreight \$370.27  
(Address unknown)

Jim Feist \$148.10  
1001 Mesa Trail  
Edmond, Oklahoma 73003

Dennis Brennan \$740.55  
728 Turner  
Brush, Colorado 80723

Wayne Melhiser \$370.27  
4000 N.W. 58th St.  
Oklahoma City, Oklahoma 73112

B.C. Danner \$740.55  
P.O. Box 722170  
Norman, Oklahoma 73070

D.R. Ruffi \$925.68  
3604 Courtside Lane  
Plano, Texas 75093

Steve Carrillo \$185.14  
(Address unknown)

Ken Curry \$370.27  
(Address Unknown)

Walter Baker \$370.27  
P.O. Box 8508  
Houston, Texas 77249

Billy Curry \$370.27  
(Address Unknown)

Randy Carrillo \$370.27  
5435 Sand Run Ave.  
Orlando, Florida 32819

Lynn Curry \$370.27  
(Address unknown)

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

**RESTITUTION AND FORFEITURE CONTINUED:**

Russ Farley  
2505 S.W. 77th St.  
Oklahoma City, Oklahoma 73159

\$185.14

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: NOEL WAYNE SMITH aka Noel W. Smith, N.W. Smith, Noel Wayne Culpepper,  
and N.W. Culpepper

Case Number: 96-CR-121-001-B

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	16
Criminal History Category:	I
Imprisonment Range:	21 months to 27 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 5,000 to \$ 2,697,248.66
Restitution:	\$ 1,263,457.47

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): Because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.



UNITED STATES DISTRICT COURT

Northern District of Oklahoma

ENTERED ON DOCKET

UNITED STATES OF AMERICA

DATE 4-11-97

v.

Case Number 96-CR-036-001-~~K~~ ✓

FESTUS OLUMIRADESA  
aka FESTUS OLU PITAN & FESTUS OLUPITAN  
Defendant.

**FILED**

APR 10 1997

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

The defendant, FESTUS OLUMIRADESA aka FESTUS OLU PITAN & FESTUS OLUPITAN, was represented by Stephen Greubel.

On motion of the United States the court has dismissed Counts One to Six of the Indictment.

The defendant pleaded guilty to Counts One and Two of the Information. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 371	Conspiracy	08-31-95	1
8 USC 1326	Reentry of a deported alien.	10-29-96	2

As pronounced on March 27, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 150, for Counts One and Two of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 9<sup>th</sup> day of April, 1997.

  
The Honorable Terry C. Kerns, Chief  
United States District Judge

Defendant's SSN: 445-92-8897

Defendant's Date of Birth: 06-12-56

Defendant's residence and mailing address: c/o U.S. MARSHAL SERVICE

Defendant: **FESTUS OLUMIRADESA**  
aka **FESTUS OLU PITAN & FESTUS OLU**  
Case Number: **96-CR-036-001-C**

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of eleven (11) months on each count to run concurrently, each with the other.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: FESTUS OLUMIRADESA  
 aka FESTUS OLU PITAN & FESTUS OLU  
 Case Number: 96-CR-036-001-C

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years as to each count said counts to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall comply with any and all instructions given to him by the Immigration and Naturalization Service concerning deportation and/or deportation proceedings. If the defendant is deported from the United States at the conclusion of the term of imprisonment imposed in this case, he shall not illegally reenter the United States. If the defendant is deported and reenters the United States, either legally or illegally during the term of supervised release, he shall report to the U.S. Probation Office closest to his point of entry within 72 hours.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: FESTUS OLUMIRADESA  
aka FESTUS OLU PITAN & FESTUS OLU  
Case Number: 96-CR-036-001-C

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10	
Criminal History Category:	II	
Imprisonment Range:	8 months to 14 months	Counts 1 & 2
Supervised Release Range:	2 to 3 years	Counts 1 & 2
Fine Range:	\$ 2,000 to \$ 20,000	Counts 1 & 2
Restitution:	\$	

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

per

DATE 4-11-97

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

SHELLY D. BOYD,

Defendant.

No. 97-CR-15-K ✓

F I L  
IN


APR 10 1997

ORDER

Phil L. L...  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

Now on this 10 day of April, 1997, this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Information against defendant in the above styled cause. The Court finds that said request ought to be granted and the Information against defendant SHELLY D. BOYD is dismissed, without prejudice.

IT IS SO ORDERED.

  
United States District Judge

FILE

APR 09 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
OKLAHOMA

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RODRICK SHAW,

Defendant,

and

PROJECT GET TOGETHER,

Garnishee.

CIVIL ACTION NO. 94-CR-57-B ✓

ENTERED ON DOCKET  
APR 10 1997  
DATE

GARNISHEE ORDER


A Writ of Garnishment, directed to Garnishee, Project Get Together, has been duly issued and served upon the Garnishee, Project Get Together. Pursuant to the Writ of Garnishment, the Garnishee, Project Get Together, filed an Answer stating that at the time of the service of the Writ it had in its possession or under its control personal property belonging to and due defendant, Rodrick Shaw, and that garnishee, Project Get Together, was indebted to defendant, Rodrick Shaw.

On January 31, 1997, the defendant, Rodrick Shaw, was notified of his right to a hearing and has not requested a hearing to determine exempt property.

IT IS ORDERED that Garnishee, Project Get Together, pay twenty-five percent (25%) of the debtors income, with payments to begin within 10 days of issuance of this Order, to plaintiff and continue said payments until the debt to the plaintiff in the amount of \$3,376.81 ~~and post judgment interest at the rate provided~~

18

*RP*  
~~by law~~ is paid in full or until the garnishee, Project Get Together, no longer has custody, possession or control of any property belonging to the debtor, Rodrick Shaw, or until further Order of this Court. Payments shall be made payable to the U.S. Department of Justice and submitted to the U.S. Attorney's Office, 333 W. 4th Street, Suite 3460, Tulsa, Oklahoma 74103.

  
UNITED STATES DISTRICT JUDGE

LFR/jmo

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

APR 09 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALVIN MANSKER,

Defendant.

Case No. 97-CV-42-B

Crim. Case No. 92-CR-47-B ✓

ENTERED ON DOCKET

DATE APR 10 1997

**ORDER**

At issue before the Court is Mansker's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (Docket # 1). After review of the record and applicable legal authorities, the Court concludes Mansker's Motion should be and is hereby **DENIED**.

**FACTS**

Mansker was indicted on a single count of Conspiracy to Manufacture Cocaine and Possession with Intent to Distribute Cocaine, in violation of 21 U.S.C. §§ 841 (a)(1), (b)(1)(A)(iii), and 846. Mansker entered into a plea agreement which the undersigned accepted at a change of plea hearing. Roughly four (4) months later, prior to sentencing but after the U.S. Probation Office had prepared a presentence investigation report, Mansker moved to withdraw his guilty plea. After a hearing, Mansker's Motion to Withdraw Guilty Plea was denied. Mansker was sentenced to a term of one hundred twenty one (121) months imprisonment, followed by five (5) years supervised release.

In his direct criminal appeal, Mansker raised the following two (2) issues:

1. The district court abused its discretion in refusing to let him withdraw his guilty plea; and
2. The government breached the plea agreement in not recommending a downward departure in sentencing for substantial assistance pursuant to 18 U.S.C. § 3553(e).



The Tenth Circuit Court of Appeals affirmed. See United States v. Mansker, 5 F.3d 548, 1993 WL 317099 (10th Cir. Aug. 16, 1993).

In the instant Motion, Mansker raises the following issues:

1. The Government breached its plea agreement to file downward departure motions, because the agreement by its terms did not require "cooperation" or "testimony" as a condition to such motions;
2. The Government and Court failed to comply with 18 U.S.C. § 3553(a)(6), which provides there should not be unwarranted sentencing disparities among defendants with similar records found guilty of similar conduct;
3. The "safety-valve" sentencing provision in 18 U.S.C. § 3553(f) should be applied to reduce Mansker's ten (10) year mandatory sentence;
4. The arguments made in this 2255 Petition are not barred by reason of the prior direct appeal in the case.

### ***Breach of Plea Agreement***

The Tenth Circuit Court of Appeal's finding the Government did not breach the plea agreement concludes the matter. Id. Relief is **DENIED**.

### ***18 U.S.C. § 3553(a)(6)***

Mansker argues his sentence of one hundred twenty one (121) months is disparate to those received by codefendants Gaston and Blackwell, sixty (60) months each, and pursuant to 18 U.S.C. § 3553(a)(6) he is entitled to be resentenced in conformity with Gaston and Blackwell. Mansker points out the Court found him to be a "lesser participant" and "on the more peripheral aspects of this conspiracy," Brief at 10 (citing Tr. 9-10), and argues Gaston and Blackwell were major members of the conspiracy. Brief at 11. The Government responds by claiming the language of 18 U.S.C. §

3553(a)(6) does not apply to Mansker as "he was convicted of conduct that is different than that which Blackwell and Gaston were." Resp. Br. at 5-6. Further argues the Government, Mansker is procedurally barred from raising this claim as it was not raised on direct appeal.

It is well settled that a section 2255 motion is not available to test the legality of matters which should have been raised on direct appeal. United States v. Cook, 997 F.2d 1312, 1320 (10th Cir. 1993). A defendant's failure to present an issue on direct criminal appeal bars him from raising the issue in his section 2255 motion, unless he can show cause excusing his procedural default and actual prejudice resulting from the errors of which he complains, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. Id. To establish cause, there must be a showing of some external impediment preventing a claim from being raised. See Murray v. Carrier, 477 U.S. 478, 492 (1986). Ignorance or inadvertence does not constitute cause, nor does failure to recognize the factual or legal basis for a claim. Id. at 486-87.

A review of the record shows Mansker's direct appeal was decided before codefendants Gaston and Blackwell pled guilty.<sup>1</sup> As this fact is external to Mansker's defense and prevented him from raising a disparate sentence argument on direct appeal, the Court finds Mansker has shown cause for his failure to present the issue on direct appeal. For the sake of discussion, the Court concludes Mansker has shown the sixty one (61) month difference in his sentence and those of Gaston and Blackwell (121 versus 60) constitutes prejudice to Mansker. Thus, the Court will address the merits of Mansker's disparate sentence claim.

"[A] trial judge may not reduce a defendant's sentence on the mere basis that a co-defendant

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<sup>1</sup>The docket sheet in the case shows the August 16, 1993 Order of the Tenth Circuit Court of Appeals was filed in the case on September 29, 1993. Gaston and Blackwell pled guilty on November 9, 1993, and were sentenced on January 11, 1994.

who engaged in similar conduct but agreed to plead guilty to lesser charges received a lighter sentence.” United States v. Contreras, 1997 WL 105031, at \*17 (10th Cir. March 11, 1997). The decision to plead guilty to Conspiracy to Manufacture Cocaine and Possession with Intent to Distribute Cocaine was made by Mansker. That the Government, after Mansker's sentence was affirmed by the Tenth Circuit Court of Appeals, decided to offer Gaston and Blackwell a plea bargain to a lesser charge is beyond the control of this Court. “[S]ubstituting the judge's view of the proper general prosecutorial policy for that of the prosecutor [does not constitute] a valid ground for departure from the guideline range.” Id. (citing United States v. Stanley, 928 F.2d 575, 583 (2d Cir.), cert. denied, 502 U.S. 845 (1991)). “Any rule to the contrary would invade the United States Attorney's broad prosecutorial discretion.” Contreras, 1997 WL 105031, at \*17. “[A]llowing a defendant's sentence to be reduced on account of a codefendant's plea bargain may tend to discourage the government from offering plea bargains in cases involving multiple defendants.” Id. (citing United States v. Mejia, 953 F.2d 461, 468 (9th Cir.), cert. denied, 504 U.S. 926 (1992)).

As the foregoing authority dictates, the Court is unable to resentence Mansker in conformity with the sentences received by Gaston and Blackwell. Relief is **DENIED**.

### ***18 U.S.C. § 3553(f)***

Mansker argues the “safety-valve” sentencing provision in 18 U.S.C. § 3553(f) should be applied to reduce his statutory ten (10) year mandatory sentence. Mansker was sentenced on January 15, 1993.

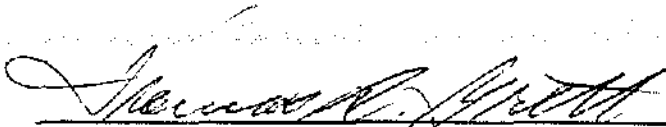
18 U.S.C. § 3553(f) applies to all sentences imposed on or after September 23, 1994. See United States v. Torres, 99 F.3d 360 (10th Cir. 1996) (citing Violent Crime Control and Law Enforcement Act of 1994, Pub.L.No. 103-322 § 80001(c), 108 Stat. 1796 (1994)).

18 U.S.C. § 3553(f) is not retroactive. Torres, 99 F.3d at 362 (citing United States v. Rodriguez-Lopez, 63 F.3d 892, 893 (9th Cir. 1995); United States v. Lopez-Pineda, 55 F.3d 693, 697 n. 3 (1st Cir.), cert. denied, 116 S.Ct. 259 (1995); U.S.S.G. § 1B1.10(c) (omitting Amendment 509, which incorporated § 3553(f) into the guidelines as § 5C1.2, from list of amendments to be applied retroactively)). This claim lacks merit and is **DENIED**.

Mansker's claim his first three claims are not procedurally barred is mere argument and needs no further attention.

**ACCORDINGLY, IT IS HEREBY ORDERED** Mansker's Motion to Vacate, Set Aside, or Correct Sentence is **DENIED** in its entirety.

SO ORDERED THIS 9<sup>th</sup> day of April, 1997.

  
THOMAS R. BRETT  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

**FILED**

APR - 9 1997

UNITED STATES OF AMERICA

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

v.

Case Number 96-CR-080-001-B

WALTER LLOYD BLUEJACKET  
Defendant.

ENTERED ON DOCKET

DATE 4-10-97

**JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**

The defendant, WALTER LLOYD BLUEJACKET, was represented by Richard James.

The defendant pleaded guilty to count(s) 1 of the Information on June 28, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

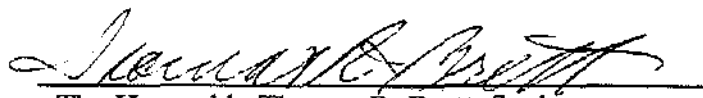
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1955 & 2	Illegal Gambling, Aiding & Abetting and Causing a Criminal Act	09/14/95	1

As pronounced on April 3, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 8 day of April, 1997.

  
The Honorable Thomas R. Brett, Senior  
United States District Judge

Defendant's SSN: 446-44-9857

Defendant's Date of Birth: 09/04/45

Defendant's residence and mailing address: Rt. 1 Box 284, Miami, OK 74354

United States District Court )  
Northern District of Oklahoma ) SSI hereby certify that the foregoing  
is a true copy of the original on file  
in this court.

Phil Lombardi, Clerk

By 

Deputy

Defendant: **WALTER LLOYD BLUEJACKET**  
Case Number: **96-CR-080-001-B**

### **PROBATION**

The defendant is hereby placed on probation for a term of 2 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
4. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

### **STANDARD CONDITIONS OF PROBATION**

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: WALTER LLOYD BLUEJACKET  
Case Number: 96-CR-080-001-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 250.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: WALTER LLOYD BLUEJACKET  
Case Number: 96-CR-080-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 2,000 to \$ 20,000 - Ct. 1
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): Upon motion of the government, as a result of defendant's substantial assistance.



**FILED**

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

APR - 9 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-080-002-B

BARBARA RUTH BLUEJACKET  
 Defendant.

ENTERED ON DOCKET  
 DATE 4-10-97

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

The defendant, BARBARA RUTH BLUEJACKET, was represented by Richard James.

The defendant pleaded guilty to count(s) 1 of the Information on June 28, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

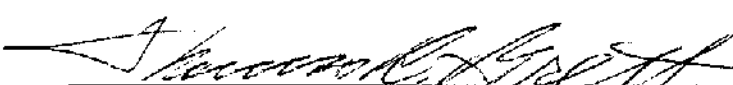
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1955 & 2	Illegal Gambling, Aiding & Abetting and Causing a Criminal Act	09/14/95	1

As pronounced on April 3, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

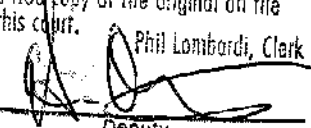
Signed this the 9<sup>th</sup> day of April, 1997.

  
 The Honorable Thomas R. Brett, Senior  
 United States District Judge

Defendant's SSN: 494-60-3855

Defendant's Date of Birth: 02-28-41

Defendant's residence and mailing address: Rt. 1 Box 284, Miami, OK 74354

United States District Court )  
 Northern District of Oklahoma ) SS  
 I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this court.  
 By  Phil Lombardi, Clerk  
 Deputy

Defendant: BARBARA RUTH BLUEJACKET  
Case Number: 96-CR-080-002-B

### PROBATION

The defendant is hereby placed on probation for a term of 30 month(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
4. The Court suspends the requirements for mandatory urine screening as dictated by 18 USC § 3608, but specifically retains the probation officer's authority to administer such tests for cause as permitted by the standard conditions of supervision.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: BARBARA RUTH BLUEJACKET  
Case Number: 96-CR-080-001-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 400.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: BARBARA RUTH BLUEJACKET  
Case Number: 96-CR-080-002-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	13
Criminal History Category:	I
Imprisonment Range:	12 months to 18 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 3,000 to \$ 30,000 - Ct. 1
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range for the following reason(s): Upon motion of the government, as a result of defendant's substantial assistance.

ev

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

PATRICIA M. CORE,

Defendant.

APR 02 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

No. 96-CR-167-H

ENTERED ON DOCKET

DATE 4-8-97

**ORDER**

Now on this 2nd day of April, 1997, this cause comes on to be heard in the matter of the plaintiff's Motion for Leave to Dismiss, without prejudice, the Information against defendant in the above styled cause. The Court finds that said request ought to be granted and the Information against defendant PATRICIA M. CORE is dismissed, without prejudice.

IT IS SO ORDERED.

S/Frank H. McCarthy  
U.S. Magistrate

United States District Judge

United States District Court  
Northern District of Oklahoma ) 55  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this court. Phil Lombardi, Clerk

By J. Mayes  
Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR -7 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MILTON EDWARDS,

Defendant.

No. 93-CR-185-C

96-C-987-e ✓

ENTERED ON COURT

APR 3 1997

**ORDER**

Currently pending before the Court is the motion filed by defendant, Milton Edwards, seeking to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255.

On January 26, 1994, Edwards was named in a Nine-Count Superseding Indictment, alleging conspiracy to possess with intent to distribute cocaine and to distribute cocaine, and use of a communication facility in facilitating a federal narcotics violation. On May 5, 1994, a jury returned a verdict of guilty against Edwards on three Counts. More specifically, Edwards was convicted on Count One, conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 846 and 841(a)(1); Count Eight, use of a communication facility in furtherance of a narcotics felony, in violation of 21 U.S.C. § 843(b); and Count Nine, use of a communication facility in furtherance of a narcotics felony, in violation of 21 U.S.C. § 843(b). On October 18, 1994, Edwards was sentenced to 360 months imprisonment on Count One, and 48 months imprisonment on Counts Eight and Nine, with the terms of imprisonment to run concurrently. Edwards was additionally ordered to pay a fine in the amount of \$5,000. Edwards' conviction and sentence were affirmed on appeal. U.S. v. Edwards, 69 F.3d 419 (10th Cir.1995), cert. denied, 116 S.Ct. 2497 (1996).

On October 28, 1996, Edwards filed a § 2255 motion. The Court subsequently granted Edwards leave to file an amended motion, which Edwards filed on February 25, 1997. Edwards moves this Court to vacate, set aside, or correct the sentence imposed upon him on the following grounds: (1) denial of due process of law, (2) newly discovered evidence, and (3) ineffective assistance of counsel.

Edwards first contends that he was denied due process of law if his drug conviction was based in part on falsified test results. Approximately two years after Edwards' trial, it was discovered and reported that Anne Castillo, a D.E.A. chemist, falsified certain test results on certain drugs that had been seized in several states, including Oklahoma. Although Castillo did not testify at Edwards' trial, D.E.A. chemist Vicki Bailey testified from Castillo's notes. Bailey testified that the substances tested were, in fact, cocaine. Edwards contends that he has reason to believe that the test results prepared in this case may have been falsified. Edwards thus seeks a new trial based upon the newly discovered evidence of falsification. Edwards maintains that if Castillo's test results were falsified in this case, such results should not have been presented to the jury.

The government concedes that Castillo has recently been the subject of an investigation relating to possible falsification of drug tests. However, the government maintains that Castillo's possible falsification relates only to marijuana tests, whereas cocaine was involved in the present case. The government admits that Castillo's lab report relating to the cocaine was introduced at trial by her supervisor. The government concedes that a D.E.A. memorandum reveals that Castillo admitted that, beginning in February of 1996, she falsified certain reports relating to tests performed on marijuana. The government asserts that such falsification began approximately two years after the tests of the cocaine involved in the present case. Thus, since the test results introduced in this case were

performed well prior to the date on which Castillo began falsifying reports, and because cocaine was involved in the present case rather than marijuana, the government argues that Edwards' motion on this point should be denied. Moreover, the government asserts that the lab report relating to the cocaine involved herein reflects that a D.E.A. special agent performed a presumptive field test with a positive result.

The Court is obligated to carefully scrutinize a motion for a new trial. "The motion is not regarded with favor and is granted only with great caution, being addressed to the sound discretion of the trial court." U.S. v. Allen, 554 F.2d 398, 403 (10th Cir. 1977), cert. denied, 434 U.S. 836 (1977). In order to prevail on a motion for new trial based upon the ground of newly discovered evidence, the defendant must show: (1) the evidence was discovered after trial, (2) the evidence could not have previously been discovered with reasonable diligence, (3) the evidence is material to the issues involved, (4) the evidence will probably produce an acquittal, and (5) the evidence must be more than impeaching or cumulative. Id. See also, U.S. v. Stevens, 978 F.2d 565, 570 (10th Cir. 1992).

The government and the Court recognize that the falsified lab tests were discovered after trial and could not have been discovered with reasonable diligence prior to or during trial. Indeed, the record reveals that the very act of falsifying lab tests did not occur until well after trial. This fact alone tends to preclude the granting of a new trial since such malfeasance occurred after the drugs involved herein were tested. Moreover, the record shows that only tests relating to marijuana were falsified. As noted, marijuana was not involved in this case. Edwards and his band of co-conspirators dealt with cocaine rather than marijuana. Furthermore, Edwards offers absolutely no evidence that the tests relating to the cocaine involved in the present case were falsified. Edwards merely asserts



that *if* his conviction was based on falsified tests, he should be given a new trial pursuant to F.R.Crim.P. 33. Such an assertion is akin to a mere hypothetical situation and does not establish the requirement for evidence which will probably produce an acquittal. Edwards states that he has reason to believe that the cocaine tests involved herein may have been falsified, but Edwards offers no proof whatsoever in support of his claims. As the evidence demonstrating post-trial falsification has no bearing on Edwards' conviction, a new trial is clearly not warranted.

Edwards next raises several claims of ineffective assistance of counsel. Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Edwards can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id.

In order to evade the above-mentioned procedural bar, Edwards relies upon the well-established exception of ineffective assistance of counsel. "A defendant may establish cause for procedural default by showing he received ineffective assistance of counsel." U.S. v. Cox, 83 F.3d 336 (10th Cir.1996). Edwards alleges that his counsel failed to (1) preview the alleged inculpatory video tape prior to trial, (2) investigate Herbert Grist as a potential witness, (3) properly and fully investigate witnesses, and (3) properly confer with his client. Edwards argues that the cumulative effect of these errors deprived him of effective assistance. Edwards maintains that had his counsel performed as the counsel guaranteed by the Sixth Amendment, the result of the trial would have been different.

The Court, however, is not convinced that Edwards satisfied the rigid standard set forth in Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court in Strickland held that a claim of ineffective assistance of counsel has two components. First, Edwards must show that his attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Id. at 687. "The proper standard for attorney performance is that of reasonably effective assistance." Id. Therefore, to succeed, Edwards must show that his counsel's performance fell below an objective standard of reasonableness. Furthermore, Edwards must show that "the deficient performance prejudiced the defense." Id. However, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . ." Id. at 689.

Edwards' first claim is that his trial counsel failed to preview an inculpatory video tape prior to trial. The tape reveals a meeting between Edwards and Grist during a purported drug transaction. The tape depicts Edwards entering the Roadway Motel on November 3, 1993. Edwards argues that the tape played to the jury depicts Edwards entering the motel only once, when, in fact, Edwards entered the motel three times. Edwards argues that had the tape been played in its entirety, it would have revealed multiple entries. Edwards contends that had the jury been exposed to the entire tape, the verdict might have been different. Edwards claims that the two prior visits to the motel room could have been interpreted by the jury as supporting Edwards' contention of non-involvement.

However, the Court has difficulty understanding what difference it would have made if the jury had seen multiple entries into the motel room versus just one. Edwards contends that the two prior visits could have evinced his non-involvement. However, it is equally plausible that the two prior visits may have actually reinforced the jury's perception that Edwards was, in fact, involved in

the drug transaction. Edwards has simply not shown that the result of his trial would have been different had the jury viewed the entire tape. Indeed, it appears to the Court that had the jury viewed the multiple entries, the jury would have been even more inclined to render a verdict of guilt. The fact that multiple entries were made is not, in and of itself, exculpatory, and would not, therefore, result in the conclusion that the jury would have reached a different verdict had the entire tape been played. Moreover, Edwards' trial counsel, William Hughes, submitted an affidavit in response to Edwards' present motion in which Hughes states that he did, in fact, receive a copy of the tape prior to trial and that he did, in fact, view the tape and read the transcript of the audio portion many times. Hughes may have considered it to be sound trial strategy to play as little of the tape as possible. As such, the Court finds Edwards' first claim of error meritless.

Edwards next contends that counsel was ineffective in not investigating Grist as a potential witness, and by failing to interview, subpoena or depose Grist. Edwards asserts that during trial, his counsel joined in a request to depose Grist, which the Court denied. Edwards claims that Grist told an investigator that Edwards was just sucked into the drug transaction. Edwards contends that Grist provided exculpatory information evincing Edwards' innocent involvement in the November 3, 1993 incidents.

In his affidavit, Hughes states that he arranged for an interview with Grist. After the investigator met with Grist, Hughes reviewed an audio tape made of the interview. Such statements by Hughes negate Edwards' contention that counsel failed to interview or investigate Grist. The record shows that after Edwards' counsel learned that the government did not intend to call Grist as a witness, Edwards' investigator met with Grist several weeks prior to trial.

The Court notes that Fed.R.Crim.P. 15(a) "does not contemplate use of depositions of adverse witnesses as discovery tools in criminal cases." Edwards, 69 F.3d at 437 (quoting, U.S. v. Carrigan, 804 F.2d 599, 602 (10th Cir.1986)). Rather, the "exceptional circumstances" standard of Rule 15(a) requires that the district court exercise "its discretion in determining whether a deposition should be taken under the particular circumstances presented." Id. (quoting, U.S. v. Fuentes-Galindo, 929 F.2d 1507, 1509 (10th Cir.1991)).

The Court defers to the wisdom of trial counsel in not subpoenaing or deposing Grist prior to trial. As noted, the Court indulges a strong presumption that the conduct of counsel falls within the wide range of acceptable assistance. Additionally, during Edwards' proceedings, the Court remarked that the alleged exculpatory information which Grist would provide in a deposition "is not that important." The Circuit commented that under the facts of this case, it cannot be said that this Court abused its discretion in denying Edwards' motion to depose Grist. Id. at 438. As such, the Court does not find error with respect to counsel's handling of Grist.

Edwards argues that counsel was ineffective in failing to properly investigate government witnesses. Specifically, Edwards contends that counsel was ineffective in failing to speak to Herbert Lewis prior to trial. At trial, Lewis admitted lying to agents in his original statements. Edwards was accused of threatening Lewis, a government witness. At the time of the threat, in March of 1994, Edwards was in the Tulsa County Jail. Edwards alleges that had counsel reviewed the interview statements of Lewis, counsel would have been able to further impeach Lewis at trial. Edwards further contends that he attempted to discuss the case with counsel, but counsel rejected the offers and substituted his own subjective and unfounded beliefs.

In his affidavit, Hughes states that he recalls a number of questions which Edwards wrote that seemed to be objectionable or tactically unwise, and, consequently, Hughes did not ask such questions. Hughes states that Edwards insisted that he had spoken to Lewis in late 1993 and had made no threats. Hughes states that he confirmed with Edwards' wife, who was present with Lewis when Lewis received the call, that the call occurred in March of 1994, just as Lewis had indicated. Hughes states that he could not locate the tapes of calls made by Edwards from jail.

The Court finds Edwards' contentions meritless. Again, the Court will not second-guess the trial strategy employed by counsel when such strategy appears sound and reasonable. It is apparent from the record that Edwards' counsel did, in fact, adequately cross-examine witnesses. The Court never had the slightest doubt that Edwards' counsel was not fully prepared during the course of the proceedings to render adequate representation and advocacy. Moreover, aside from his general allegations that certain witnesses may not have been properly impeached, Edwards completely fails to show prejudice. Edwards has not established that, had counsel asked the questions which Edwards suggested, or effected a strategy desired by Edwards, the outcome of the proceedings would have been different. With respect to the phone call to Lewis, this Court stated during the proceedings that "there was a concerted effort being made through that telephone conversation to alter the truth, the testimony, and that there would be repercussions if that didn't occur. That's the way Mr. Lewis took it, that's the understanding I had as I heard [the testimony], and . . . I would not be surprised if [the jury] interpreted it the same way." Edwards, at 441. As such, the Court finds that Edwards failed to prove ineffective assistance.


Finally, Edwards claims that counsel was ineffective due to the fact that counsel only conferred with Edwards three times in preparation for trial. However, in Hughes' affidavit, he states

that he met with Edwards at least seventeen times to plan trial strategy and prepare for trial. As such, the Court finds that counsel adequately conferred with Edwards, and Edwards has therefore failed to establish error.

The Court therefore finds that Edwards failed to establish ineffective assistance of counsel on any claim raised herein. The Circuit noted that "the evidence presented at trial overwhelmingly indicates that Edwards . . . '[was] responsible for organizing others for the purpose of carrying out the crime.'" Id. at 439-440 (quoting, U.S. v. Robertson, 45 F.3d 1423, 1448 (10th Cir.1995), cert. denied, 115 S.Ct. 2258 (1995)). The Circuit further noted that "Edwards organized the conspiracy, set up an elaborate courier system through use of Grist's trucking company, and introduced Grist to Tavarez -- the conspiracy's major source of cocaine -- in order to further the overall scheme of transporting cocaine from Houston to Oklahoma. Moreover, contrary to Edwards' contentions, the evidence indicates that he exercised control over various members of the conspiracy while he was incarcerated. Consequently, we agree with the district court's observation that 'there's no doubt . . . that the determination that [Edwards] was a leader is established almost beyond refutation.'" Id. Hence, given the overwhelming evidence against Edwards, this Court is not at all surprised that the jury convicted Edwards. The Court is satisfied that counsel's performance in this case fell within the wide range of professional assistance, and the Court does not agree that the result of the proceedings would have been different but for the alleged errors of counsel. That is, the Court finds that Edwards failed to show that "there is a reasonable probability that, but for counsel's [alleged] unprofessional errors, the result of the proceeding would have been different." Strickland at 694.

Accordingly, Edwards' motion to vacate, set aside, or correct sentence is hereby DENIED  
and Edwards' motion for a new trial is hereby DENIED.

IT IS SO ORDERED this 17<sup>th</sup> day of April, 1997.

  
H. DALE COOK  
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR -7 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KERRY CHAPLIN,

Defendant.

No. 93-CR-185-C

97-C-78-C

ENTERED ON COURT

APR 9 1997

**ORDER**

Currently pending before the Court is the motion filed by defendant, Kerry Chaplin, seeking to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255.

On January 26, 1994, Chaplin was named in a Nine-Count Superseding Indictment, alleging conspiracy to possess with intent to distribute cocaine and to distribute cocaine, and use of a communication facility in facilitating a federal narcotics violation. On May 5, 1994, a jury returned a verdict of guilty against Chaplin on seven Counts. More specifically, Chaplin was convicted on Count One, conspiracy to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. §§ 846 and 841(a)(1); Counts Two through Six, use of a communication facility in furtherance of a narcotics felony, in violation of 21 U.S.C. § 843(b); and Count Seven, possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). On December 20, 1994, Chaplin was sentenced to 151 months imprisonment on Counts One and Seven, and 48 months imprisonment on Counts Two through Six, with the terms of imprisonment to run concurrently. Chaplin was additionally ordered to pay a fine in the amount of \$5,000. Chaplin's conviction and sentence were affirmed on appeal. U.S. v. Edwards, 69 F.3d 419 (10th Cir.1995), cert. denied, 116 S.Ct. 2497 (1996).



On January 24, 1997, Chaplin filed his present § 2255 motion. Chaplin subsequently filed a motion attacking jurisdiction. Chaplin moves this Court to vacate, set aside, or correct the sentence imposed upon him on the following grounds: (1) improper jury selection, (2) unlawful wiretap, (3) failure to prove conspiracy, (4) invalid jury instructions, (5) improperly calculated sentence, (6) violation of double jeopardy, and (7) ineffective assistance of counsel.

Prior to addressing the merits of Chaplin's motion, the Court notes that § 2255, as amended in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Chaplin, his motion would be time-barred. However, the Court finds that "defendants whose date of conviction would per se preclude the filing of a petition pursuant to § 2255 under a literal reading of the amendment, were surely meant to have one year from the date of the amendment to file their petitions." Smith v. U.S., 945 F.Supp. 1439, 1441 (D.Co. 1996). Hence, the Court concludes that Chaplin's present motion is not time-barred under § 2255, as amended.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Chaplin can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id. In order to evade the above-mentioned procedural bar, Chaplin relies upon the well-established exception (and now the universal claim) of ineffective assistance of counsel. "A defendant may establish cause for procedural default by showing he received ineffective assistance of counsel." U.S. v. Cox, 83 F.3d 336 (10th Cir.1996).

Chaplin's first ground of error contends that the jury selection process in this judicial district is unfair and discriminatory. This argument was raised by Chaplin's co-defendant, Milton Edwards, on appeal to the Tenth Circuit. The Circuit considered and rejected the argument, holding that "Edwards has failed to show that a 'systematic exclusion' of African-Americans occurred. *By chance*, the venire had one non-caucasian." Edwards, 69 F.3d at 437 (emphasis added). Thus, as the Circuit has already decided this very issue, the Court will not consider it further.

Chaplin contends that the government did not establish necessity with respect to the April 19, 1993 wiretaps. As with Chaplin's challenge to jury selection, the Tenth Circuit fully considered and rejected defendants' assertion that the wiretaps were unlawful or unnecessary. The Circuit held that, "the application for a wiretap order set forth a full and complete statement as to the investigative techniques and procedures which had been utilized prior to resort to wiretap. . . . We therefore conclude there was a sufficient explanation indicating that a wiretap was necessary." Id. at 430. Again, Chaplin is attempting to revive an issue which was rejected by the Circuit. This Court will not entertain matters which have already been settled by the Circuit.

Chaplin contends that the government failed to prove a conspiracy. Once more, the Court notes that this argument was considered and rejected by the Tenth Circuit. The Circuit found "sufficient evidence from which any reasonable jury could find that Chaplin knowingly conspired with his codefendants to distribute cocaine." Id. at 432. As this issue has been decided by the Circuit, this Court will not review it further.

Chaplin argues that the Court erred in failing to submit a multiple conspiracy instruction to the jury. However, the Tenth Circuit held that the Court "did not abuse its discretion in declining to instruct the jury on multiple conspiracies." Id. at 434. Hence, this issue is moot.

Chaplin asserts that the Court deprived Chaplin of due process in the sentencing phase. Again, this issue was considered and rejected by the Tenth Circuit, which held that this Court "did not err in calculating the quantity of cocaine attributable to . . . Chaplin . . ." *Id.* at 439. Consequently, this argument fails.

Chaplin contends that double jeopardy was violated due to the fact that the criminal trial was based on the same offense for which the government obtained a civil forfeiture in the amount of \$19,619. The United States Supreme Court considered and rejected this argument in *U.S. v. Ursery*, 116 S.Ct. 2135, 2138-49 (1996), in which the Supreme Court held that in rem civil forfeitures are neither punishment nor criminal for purposes of double jeopardy. As such, the Court rejects Chaplin's argument.

Chaplin next asserts that he received ineffective assistance of counsel. Chaplin contends that his counsel was ineffective because he failed to (1) challenge the jury selection process, (2) file a motion to dismiss Count One relating to conspiracy, (3) require the Court to submit Chaplin's multiple conspiracy instruction, and (4) advise the Court of Chaplin's multiple punishments with respect to the forfeiture and subsequent criminal prosecution.

However, it is quite apparent that Chaplin has completely failed to satisfy the rigid standard contained in *Strickland v. Washington*, 466 U.S. 668 (1984). The Supreme Court in *Strickland* held that a claim of ineffective assistance of counsel has two components. First, Chaplin must show that his attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." *Id.* at 687. "The proper standard for attorney performance is that of reasonably effective assistance." *Id.* Therefore, to succeed, Chaplin must show that his counsel's performance fell below an objective standard of reasonableness. Furthermore, Chaplin must show that "the deficient

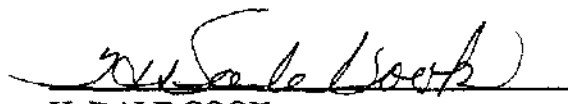
performance prejudiced the defense.” Id. However, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance . . .” Id. at 689.

After raising his several claims of error, Chaplin essentially argues that such errors resulted from his counsel’s deficient performance. However, it is clear that each of Chaplin’s claims of error is meritless, as five of the issues were specifically considered and rejected by the Tenth Circuit, and the remaining issue addressing double jeopardy was rejected by the Supreme Court. Hence, Chaplin failed to demonstrate prejudice. That is, Chaplin failed to show that “there is a reasonable probability that, but for counsel’s [alleged] unprofessional errors, the result of the proceeding would have been different.” Strickland, at 694. Common sense dictates that even if counsel was deficient in failing to pursue such matters at trial, no prejudice resulted, since each issue raised herein was determined to be meritless. This being the case, the Court does not understand how Chaplin can argue that the result of his proceeding would have been different if not for counsel’s alleged errors.

Lastly, in a motion filed subsequent to his § 2255 motion, Chaplin argues that this Court was and is without jurisdiction in the instant case because Oklahoma has not surrendered jurisdiction to the United States. The Court finds this contention patently frivolous and undeserving of further comment.

Accordingly, Chaplin’s motion to vacate, set aside, or correct sentence is hereby DENIED, and Chaplin’s motion attacking this Court’s jurisdiction is hereby DENIED.

IT IS SO ORDERED this 4<sup>th</sup> day of April, 1997.

  
H. DALE COOK  
U.S. District Judge

# UNITED STATES DISTRICT COURT

## Northern District of Oklahoma

**FILED****APR - 7 1997**
 Phil Lombardi, Clerk  
 U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Case Number 96-CR-129-001-H

 MARK ANTHONY KELLEY  
 Defendant.

### JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, MARK ANTHONY KELLEY, was represented by Stephen J. Knorr.

On motion of the United States the court has dismissed count(s) 1 and 2 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on November 26, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

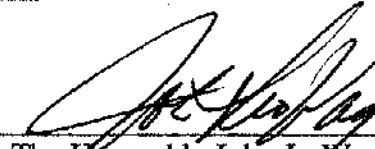
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1703(b)	Delay of Mail	06/26/96	1

As pronounced on March 28, 1997, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ \$25, for count(s) 1 of the Information on November 26, 1996, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 4<sup>th</sup> day of April, 1997.

  
 The Honorable John L. Wagner  
 United States Magistrate Judge

United States District Court  
 Northern District of Oklahoma  
 I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this court.

Phil Lombardi, Clerk  
 By   
 Deputy

Defendant's SSN: 441-56-1309

Defendant's Date of Birth: March 28, 1956

Defendant's residence and mailing address: 131 N. Gore Street, Sapulpa, OK 74066

**ENTERED ON DOCKET**  
**DATE** 4-7-97

Defendant: MARK ANTHONY KELLEY  
Case Number: 96-CR-129-001-H

### PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MARK ANTHONY KELLEY  
Case Number: 96-CR-129-001-H

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,000. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: MARK ANTHONY KELLEY

Case Number: 96-CR-129-001-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$100.00 on Count 1.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Department of Human Services P.O. Box 325352 Oklahoma City, OK 73125	\$100.00

Payments of restitution are to be made to the Clerk of the Court for the Northern District of Oklahoma for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.



Defendant: MARK ANTHONY KELLEY  
Case Number: 96-CR-129-001-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	8
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 1,000 to \$ 10,000 - Ct. 1
Restitution:	\$ 100.00

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

32

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

APR -1 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

URON JAMAL SMITH,

Defendant.

No. 93-CR-141-C

96-C-1122-C

ENTERED ON DOCKET

DATE APR 02 1997

**ORDER**

Currently pending before the Court is the motion filed by defendant, Uron Smith, seeking to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255.

On November 1, 1993, a Three-Count Information was filed against Smith. Count One charged that Smith committed armed robbery against the Tulsa Federal Employees Credit Union on October 23, 1992, and took \$2,218.00 from said institution, in violation of 18 U.S.C. §§ 2113(a) and (d). Count Two charged that Smith committed robbery against the Tulsa Federal Employees Credit Union on August 7, 1992, and took \$3,655.00 from said institution, in violation of 18 U.S.C. § 2113(a). Count Three charged that Smith committed robbery against the Tulsa Federal Employees Credit Union on July 25, 1992, and took \$1,707.00 from said institution, in violation of 18 U.S.C. § 2113(a). Pursuant to a plea agreement, Smith pled guilty to the Information. Smith was sentenced on December 22, 1993, to 70 months imprisonment on each Count, to run concurrently. Three years of supervised release was imposed. Smith was further ordered to pay \$3,000 in restitution. Smith did not appeal either his conviction or sentence. On December 5, 1996, Smith filed the present motion pursuant to 28 U.S.C. § 2255, attacking the order of restitution and alleging that he should have received a downward departure.

(16)

Prior to addressing the merits of Smith's motion, the Court notes that § 2255, as amended in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Smith, his motion would be time-barred. However, the Court finds that "defendants whose date of conviction would per se preclude the filing of a petition pursuant to § 2255 under a literal reading of the amendment, were surely meant to have one year from the date of the amendment to file their petitions." Smith v. U.S., 945 F.Supp. 1439, 1441 (D.Co. 1996). Hence, the Court concludes that Smith's present motion is not time-barred under § 2255, as amended.

Typically, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Smith can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id.

In order to evade the above-mentioned procedural bar, Smith relies upon the well-established exception of ineffective assistance of counsel. "A defendant may establish cause for procedural default by showing he received ineffective assistance of counsel." U.S. v. Cox, 83 F.3d 336 (10th Cir.1996). Smith alleges that his counsel failed to object to the order of restitution. Smith contends that the Court ordered restitution without making a finding that Smith was able to pay such restitution and that hardship will result from the payment of such restitution. Smith further contends that his counsel was ineffective in failing to appeal the order. Smith also maintains that his counsel was ineffective in failing to seek a downward departure during sentencing.

The Court, however, is not convinced that Smith satisfied the rigid standard contained in Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court in Strickland held that a claim of ineffective assistance of counsel has two components. First, Smith must show that his attorney “made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed . . . by the Sixth Amendment.” Id. at 687. “The proper standard for attorney performance is that of reasonably effective assistance.” Id. Therefore, to succeed, Smith must show that his counsel’s performance fell below an objective standard of reasonableness. Furthermore, Smith must show that “the deficient performance prejudiced the defense.” Id. However, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance . . . .” Id. at 689.

Even if the Court were to agree with Smith that his attorney failed to provide the reasonable and professional assistance guaranteed by the Constitution during the sentencing phase of his case, the Court nevertheless finds that Smith failed to show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 694. That is, based upon the record, the Court finds that Smith was not prejudiced by his attorney’s failure to raise these issues during sentencing.

With respect to the order of restitution, the Court notes that paragraph six of Smith’s plea agreement specifically provides that Smith understands and agrees that he may be ordered to make restitution to the victim. The plea agreement was signed by Smith and his attorney. Smith argues that at the time he signed the agreement, his counsel did not explain any possibility of challenging the sentence or the restitution. It is apparent, however, that at the time Smith signed the agreement, he did, in fact, understand that such restitution could be ordered by the Court.

Paragraph seven of Smith's presentence report (PSR) reveals that the victim credit unions suffered a loss of \$7,580.00 as a result of Smith's unlawful conduct. Paragraph 53 of Smith's PSR reveals that Smith has no assets, that he owes \$485 to the city of Los Angeles, and that he pays his mother \$175 for room and board when he is employed. Smith has no dependents. In paragraph 64, the PSR indicates that restitution may be ordered, provided consideration is given to the resources of Smith, his financial needs, earning ability, dependents, and other factors as the Court deems appropriate.

The Victim and Witness Protection Act (VWPA), 18 U.S.C. §§ 3663-3664, which was in effect at the time of Smith's sentencing, required the Court to consider the victim's loss, the defendant's financial resources, and the financial needs and earning ability of the defendant and the defendant's dependents. 18 U.S.C. § 3664(a). The burden of demonstrating the amount of loss is on the government while the burden of demonstrating the financial resources and needs of the defendant is on the defendant. 18 U.S.C. § 3664(d). A "sentencing court has wide discretion to fashion an appropriate sentence for an individual defendant." U.S. v. Harris, 7 F.3d 1537, 1540 (10th Cir.1993).

In the present case, the Court determined at the time of sentencing that restitution in the amount of \$3,000 was appropriate. The Court carefully reviewed the PSR prior to sentencing and the Court understood that Smith, at that time, possessed no assets, had no dependents, and owed a debt to the city of Los Angeles. The Court also understood that Smith is a young and able-bodied male and certainly possesses an earning ability which would permit him to satisfy the restitution. After carefully weighing all relevant considerations, the Court determined that full restitution would be excessive. Thus, the Court greatly reduced the amount of restitution by over \$4,000. However,

the Court could not simply ignore the loss suffered by the victim as a result of Smith's criminal conduct. Thus, the Court found that an amount of \$3,000 in restitution would allow the victim to recover a part of its loss while not imposing an insurmountable burden upon Smith. Although restitution was ordered to be paid in full immediately, the Court allowed any unpaid balance to be paid during incarceration and during the period of supervised release. Furthermore, although the Court was authorized to impose a fine of up to \$125,000, the Court waived the fine due to Smith's financial condition. It is therefore clear that Smith was ordered to pay a relatively small amount when compared to the amount which the Court was authorized to impose. Accordingly, the Court does not find that its order of restitution places an undue hardship upon Smith, and the Court thus reaffirms its original order of restitution. Since the Court finds the order of restitution to be appropriate, the Court concludes that Smith's ineffective assistance claim fails.


With respect to the downward departure claim, Smith states that he was eighteen years of age at the time he robbed the credit unions, he lacked parental guidance, and came from a poor family. Smith contends that these considerations warrant a downward departure. The Court finds that none of these circumstances warrant a downward departure in this case. Specifically, § 5H1.1 of the Guidelines states that age is not ordinarily relevant in determining whether a sentence should depart from the guideline range. Age, however, may be a reason to depart downward when the defendant is elderly and infirm. Smith is not elderly or infirm. Rather, Smith was a young adult at the time of the offense conduct. Moreover, Smith's youthful age cannot be said to have blinded Smith to the reality that his conduct was unlawful. Thus, the Court finds that a downward departure based upon age is not appropriate, and the Court would have overruled any motion to that effect had it been presented at sentencing.

The fact that Smith claims to have come from a poor family is irrelevant to sentencing. Section 5H1.10 expressly provides that race, sex, national origin, creed, religion, and socio-economic status are not relevant in determining the sentence. As such, the Court would have overruled any motion to depart downward based on these factors.

Finally, Smith points to lack of parental guidance as a reason to depart downward. Section 5H1.12 provides that lack of guidance indicating a disadvantaged upbringing is not relevant to determining the sentence. Smith argues that § 5H1.12 cannot be applied here because it went into effect on November 1, 1992, which is after the dates of criminal conduct. The Court notes that, absent ex post facto concerns, the Court is directed to apply the Guidelines in effect at the time of sentencing. U.S. v. Maples, 95 F.3d 35, 37 (10th Cir.1996), cert. denied, 117 S.Ct. 716 (1997); 18 U.S.C. § 3553(a)(4)(A). As noted, Smith was sentenced in December of 1993, which is after § 5H1.12 went into effect, although Smith's criminal conduct occurred prior to the effective date of § 5H1.12. Thus, absent an ex post facto problem, § 5H1.12 applies. The Court notes that the application of § 5H1.12 may raise ex post facto concerns and it is possible that § 5H1.12 should not be applied to Smith. Nevertheless, even without the mandate of § 5H1.12, the Court would have not departed downward based on Smith's claim of lack of guidance. It may be true that Smith had a disadvantaged upbringing and that he was not properly guided during his youth. However, even a person who is starving for guidance and direction should realize that robbery is a serious crime carrying severe consequences. Moreover, Smith did not commit just one robbery; Smith committed three robberies and was armed during at least one of them. The Court further notes that Smith received the minimal authorized punishment. Given the facts of this case and the number of robberies committed, the Court would simply have not departed downward based upon lack of guidance.

Accordingly, Smith's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 is hereby DENIED.

IT IS SO ORDERED this 1st day of April, 1997.

  
H. DALE COOK  
United States District Judge



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

APR -1 1997

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

URON JAMAL SMITH,

Defendant.

No. 93-CR-141-C

96-C-1122-C

ENTERED ON DOCKET

DATE APR 02 1997

ORDER

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Prior to addressing the merits of Smith's motion, the Court notes that § 2255, as amended in April of 1996, provides for a one-year limitations period in which to file a § 2255 motion. The Court further notes that if the Court were to apply the limitations period to Smith, his motion would be time-barred. However, the Court finds that "defendants whose date of conviction would per se preclude the filing of a petition pursuant to § 2255 under a literal reading of the amendment, were surely meant to have one year from the date of the amendment to file their petitions." Smith v. U.S., 945 F.Supp. 1439, 1441 (D.Co. 1996). Hence, the Court concludes that Smith's present motion is not time-barred under § 2255, as amended.

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In the present case, the Court determined at the time of sentencing that restitution in the amount of \$3,000 was appropriate. The Court carefully reviewed the PSR prior to sentencing and the Court understood that Smith, at that time, possessed no assets, had no dependents, and owed a debt to the city of Los Angeles. The Court also understood that Smith is a young and able-bodied male and certainly possesses an earning ability which would permit him to satisfy the restitution. After carefully weighing all relevant considerations, the Court determined that full restitution would be excessive. Thus, the Court greatly reduced the amount of restitution by over \$4,000. However,

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The fact that Smith claims to have come from a poor family is irrelevant to sentencing. Section 5H1.10 expressly provides that race, sex, national origin, creed, religion, and socio-economic status are not relevant in determining the sentence. As such, the Court would have overruled any motion to depart downward based on these factors.

Finally, Smith points to lack of parental guidance as a reason to depart downward. Section 5H1.12 provides that lack of guidance indicating a disadvantaged upbringing is not relevant to determining the sentence. Smith argues that § 5H1.12 cannot be applied here because it went into effect on November 1, 1992, which is after the dates of criminal conduct. The Court notes that, absent ex post facto concerns, the Court is directed to apply the Guidelines in effect at the time of sentencing. U.S. v. Maples, 95 F.3d 35, 37 (10th Cir.1996), cert. denied, 117 S.Ct. 716 (1997); 18 U.S.C. § 3553(a)(4)(A). As noted, Smith was sentenced in December of 1993, which is after § 5H1.12 went into effect, although Smith's criminal conduct occurred prior to the effective date of § 5H1.12. Thus, absent an ex post facto problem, § 5H1.12 applies. The Court notes that the application of § 5H1.12 may raise ex post facto concerns and it is possible that § 5H1.12 should not be applied to Smith. Nevertheless, even without the mandate of § 5H1.12, the Court would have not departed downward based on Smith's claim of lack of guidance. It may be true that Smith had a disadvantaged upbringing and that he was not properly guided during his youth. However, even a person who is starving for guidance and direction should realize that robbery is a serious crime carrying severe consequences. Moreover, Smith did not commit just one robbery; Smith committed three robberies and was armed during at least one of them. The Court further notes that Smith received the minimal authorized punishment. Given the facts of this case and the number of robberies committed, the Court would simply have not departed downward based upon lack of guidance.

Accordingly, Smith's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 is hereby DENIED.

IT IS SO ORDERED this 1st day of April, 1997.

  
H. DALE COOK  
United States District Judge

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

**FILED****MAR 31 1997****UNITED STATES OF AMERICA**

**Phil Lombardi, Clerk**  
**U.S. DISTRICT COURT**

v.

Case Number 90-CR-092-001-B

**MARIO ROBERTO GARCIA-EMANUEL**  
 Defendant.

ENTERED ON DOCKET

DATE 4-1-97

**AMENDED**  
**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)  
 (Direct Motion to District Court Pursuant to 28 USC § 2255)

The defendant, MARIO ROBERTO GARCIA-EMANUEL, was represented by Ronald E. Schwartz.

The defendant was found guilty on count(s) 1, 2, 6, 7, 8, 9, 10, 12, and 14-17 of the Superseding Indictment. On April 1, 1991, the District Court dismissed Counts 8-10, 12, & 14-17. On remand, the 10th Circuit reversed the Judgment of Acquittal in Counts 8, and 15-17. On January 22, 1997, the District Court granted defendant's 28 USC § 2255 motion, vacating Count One. Accordingly, the defendant is adjudged guilty of Counts 2, 6, 7, 8, and 15-17 of the Superseding Indictment.

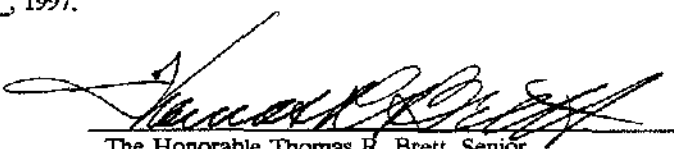
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 848	A Continuing Criminal Enterprise	12/88	2
26 USC 7201	Income Tax Evasion	4/89	6 & 7
18 USC 371 and 1956(a)(1)	Conspiracy to Launder Money	10/4/88	8
18 USC 1956 (a)(1) & (2)	Money Laundering and Aiding & Abetting	6/10/88	15-17

As pronounced on March 25, 1997, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 350.00, for count(s) 2, 6-8, and 15-17 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 27<sup>th</sup> day of Mar., 1997.

  
 The Honorable Thomas R. Brett, Senior  
 United States District Judge

Defendant's SSN: 042-58-1961

Defendant's Date of Birth: April 24, 1948

Defendant's residence and mailing address: C/O FCI, El Reno, Highway 66 West, El Reno, OK 73036-1000

United States District Court ) SS  
 Northern District of Oklahoma )  
 I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this court.  
 Phil Lombardi, Clerk

By   
 Deputy



Defendant: MARIO ROBERTO GARCIA-EMANUEL  
Case Number: 90-CR-092-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 240 months. This term consists of 240 months in Counts 2, 15, 16, and 17; and 60 months in Counts 6, 7, and 8, all counts to run concurrently, each with each other. Said counts are to run concurrently with the sentences imposed in preguideline counts 3, 4, 5, 11, and 13, for a total sentence on all counts of 240 months.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: MARIO ROBERTO GARCIA-EMANUEL  
Case Number: 90-CR-092-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years. This term consists of 5 years in Count 2; and 3 years in Counts 6, 7, 8, 15, 16, and 17, all counts to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MARIO ROBERTO GARCIA-EMANUEL  
Case Number: 90-CR-092-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	36
Criminal History Category:	I
Imprisonment Range:	240 months - Cts. 2,6-8, & 15-17
Supervised Release Range:	5 years - Ct. 2
	2 to 3 years - Cts.6-8, 15-17
Fine Range:	\$ 20,000 to \$ 3,500,000 - Cts. 2, 6-8, 15-17
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED

UNITED STATES OF AMERICA

v.

Case Number 96-CR-158-001-BL  
Lombardi, Clerk  
U.S. DISTRICT COURT

EDDY EARL WALLING aka OOGHEY  
Defendant.

ENTERED ON DOCKET  
DATE 4-1-97

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

The defendant, EDDY EARL WALLING aka OOGHEY, was represented by Richard Amatvcci.

The defendant pleaded guilty to count(s) One of the Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 846, 21 USC 843 (a)(3)	Conspiracy to Obtain & Obtaining Controlled Substance by Fraud	10-21-94	1

As pronounced on March 27, 1997, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for count(s) One of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 31<sup>st</sup> day of MARCH, 1997.

  
The Honorable Michael Burrage  
United States District Judge

Defendant's SSN: 442-64-8658

Defendant's Date of Birth: 12-14-53

Defendant's Residence and mailing address: Rt 2, Box 652, Locust Grove, OK 74352

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Defendant: EDDY EARL WALLING aka OOGHEY  
Case Number: 96-CR-158-001-BU

### PROBATION

The defendant is hereby placed on probation for a term of two (2) years.

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: EDDY EARL WALLING aka OOGY  
Case Number: 96-CR-158-001-BU

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	6
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	1 year
Fine Range:	\$ 500 to \$ 5,000
Restitution:	N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.